DOCUMENT RESUME

ED 469 738 RC 023 746

AUTHOR	Vinding, Diana, Ed.; Wessendorff, Kathrin, Ed.; Parellada, Alejandro, Ed.; Erni, Christian, Ed.; Jensen, Marianne, Ed.; Garcia-Alix, Lola, Ed.
TITLE	The Indigenous World, 2001-2002 = El Mundo Indigena, 2001-2002.
INSTITUTION	International Work Group for Indigenous Affairs, Copenhagen (Denmark).
SPONS AGENCY	Royal Danish Ministry of Foreign Affairs, Copenhagen.; Norwegian Agency for Development Cooperation, Oslo.
ISBN	ISBN-87-90730-70-4
ISSN	ISSN-0105-4503
PUB DATE	2002-00-00
NOTE	923p.; Photographs and maps may not reproduce adequately. For 2000-2001 edition, see ED 456 006. Spanish translation by Mario Di Lucci.
AVAILABLE FROM	IWGIA, International Secretariat, Classensgade, 11 E, DK-2100 Copenhagen, Denmark ($20). E-mail: iwgia@iwgia.org. English and Spanish version available separately.
PUB TYPE	Collected Works - General (020) -- Reports - Descriptive (141) -- Multilingual/Bilingual Materials (171)
LANGUAGE	English, Spanish
EDRS PRICE	EDRS Price MF06 Plus Postage. PC Not Available from EDRS
DESCRIPTORS	Acculturation; *Activism; American Indians; *Civil Liberties; Conservation (Environment); *Cultural Maintenance; Elementary Secondary Education; Ethnic Discrimination; Foreign Countries; *Indigenous Populations; *Land Use; Language Maintenance; Language Minorities; Politics; *Self Determination
IDENTIFIERS	*Land Rights; Oppression; United Nations

ABSTRACT

This document contains the English and Spanish version of an annual publication which examines political, social, environmental, and educational issues concerning indigenous peoples around the world in 2001-02. Part 1 describes current situations and events in 11 world regions: the Arctic; North America; Mexico and Central America; South America; Australia and the Pacific; east and southeast Asia; south Asia; and four sections of Africa. In general, indigenous peoples worldwide were dealing with issues related to land rights, self-determination, relations between central government and indigenous communities, outright oppression and violence, environmental destruction by economic development projects, communal rights, women's rights, access to appropriate education and to health care, and preservation of indigenous cultures and languages. The events of September 11 raised fears that indigenous peoples struggling for self-determination and fundamental rights would be unjustly accused of being terrorists. Items of educational interest in the Arctic and the Americas include ongoing debates in Greenland over the relative status of Danish and Greenlandic in the schools; efforts to protect Saami language and culture in Sweden; inadequate U.S. federal funding for tribal administration of schools and for necessary construction and repair of Bureau of Indian Affairs schools; reforms in indigenous education in Guatemala; the situation of the bilingual intercultural education system in Venezuela; efforts to protect collective intellectual property of indigenous peoples of the Amazon region; and

Reproductions supplied by EDRS are the best that can be made
from the original document.

training of indigenous teachers in Brazil. Articles on other regions discuss education as a tool of Chinese repression in Tibet; language issues in East Timor, Nepal, Morocco, Ethiopia, and South Africa; nonformal education initiatives and native language instruction for indigenous Cambodians; and language and cultural maintenance through cultural festivals in Kenya. Part 2 reports on United Nations work on indigenous rights. (SV)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 469 738

The Indigenous World, 2001-2002 = El mundo indigena, 2001-2002.

Diana Vinding
Kathrin Wessendorff
Alejandro Parellada
Christian Erni
Marianne Jensen
Lola Alix-Garcia

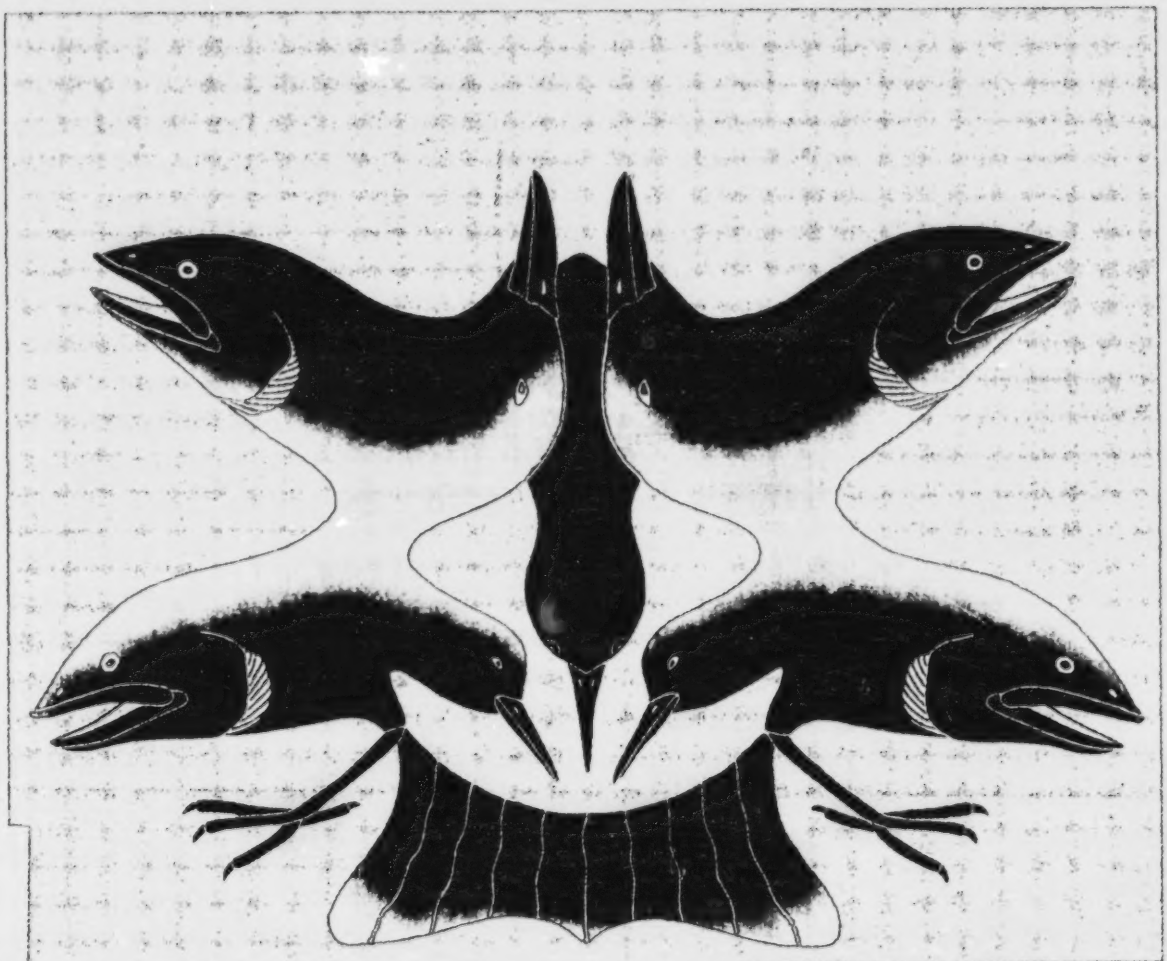
U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality
Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY
L. Dahl
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
2B

RC 023746

BEST COPY AVAILABLE

THE INDIGENOUS WORLD 2001-2002



RC023746

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

L. Dahl

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

THE INDIGENOUS WORLD 2001/2002

IWGIA
Copenhagen 2002

4

THE INDIGENOUS WORLD 2001/2002

© **Copyright:** The Authors and IWGIA (The International Work Group for Indigenous Affairs), 2002 - All Rights Reserved.

Compilation and editing: Diana Vinding
Cover, typesetting and maps: Jorge Monrás
English translation: Elaine Bolton
English proofreading: Elaine Bolton & Birgit Stephenson
Regional editors:
The Arctic & North America – Kathrin Wessendorff
Mexico & Central America – Diana Vinding
South America – Alejandro Parellada
Australia and the Pacific – Diana Vinding
Asia – Christian Erni
Africa – Marianne Jensen
Indigenous Rights – Lola García-Alix
Prepress and print: Eks-Skolens Trykkeri aps
Copenhagen, Denmark
ISBN: 87-90730-70-4 - **ISSN:** 0105-4503

Cover Photo: ***"Fish Become Birds"***. 1999 stonecut by Kavavaow Mannomee. The work is reproduced with the kind permission of The West Baffin Eskimo Cooperative, Cape Dorset, Nunavut – www.dorsetfinearts.com - All copyrights reserved.

The reproduction and distribution of information contained in THE INDIGENOUS WORLD, INDIGENOUS AFFAIRS, and the IWGIA BOOKS is welcome as long as the source is cited. However, the reproduction of whole BOOKS should not occur without the consent of IWGIA. The opinions expressed in IWGIA publications do not necessarily express those of the Work Group.

IWGIA

INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS
Classensgade 11 E, DK 2100 - Copenhagen, Denmark
Tel: (+45) 35 27 05 00 - Fax: (+45) 35 27 05 07
E-mail: iwgia@iwgia.org - www.iwgia.org

This book has been produced
with financial support from the
Danish Ministry of Foreign Affairs and
the Norwegian Agency for Development Cooperation

CONTENTS

Editorial 9
About our contributors 11

PART I - Region and country reports

The Arctic

The Arctic Council 22
Greenland 24
Sápmi
Norway 29
Sweden 33
Russia 37
The Indigenous Peoples of Russia 38
Chukotka 45
Alaska 46
Nunavut 50

North America

Canada 56
The Northwest Territories 63
The United States of America 66

Mexico and Central America

Mexico 74
Guatemala 86
Nicaragua 92
Panama 99

South America

Colombia 106
Venezuela 114
Peru 124
Bolivia 133
Brazil 148
Paraguay 161
Argentina 170
Chile 181

Australia and the Pacific

Australia 188
The Pacific Region 196
Ka Pae'aina (Hawai'i) 201
Te Ao Maohi (French Polynesia) 203
Fiji Islands 206
Kanaky (New Caledonia) 211
The Solomon Islands 214
Bougainville 216
West Papua 218
Guahan (Guam) 222

East Asia & Southeast Asia

Japan 226
China 231
Tibet 233
Taiwan 238
Philippines 243
Timor Lorosa'e (East Timor) 252
Indonesia 258
Malaysia 268
Thailand 272
Cambodia 278
Vietnam 285
Laos 291
Burma 299
Nagalim 306

South Asia

Bangladesh 312
Nepal 322
India 328

North and West Africa

The Amazigh People 348
The Touareg People 353

East Africa

Ethiopia 366
East Africa: Regional Processes 371
Kenya 374
Tanzania 381

Central Africa

The Great Lakes Region: Political Update 390
Rwanda 392
Democratic Republic of Congo (DRC) 395
Uganda 397
Cameroon 399

Southern Africa

Namibia 404
Botswana 411
South Africa 419

PART II - Indigenous Rights

The Draft Declaration 426
The Permanent Forum 444
The Special Rapporteur 451
The African Commission on Human and Peoples' Rights 452

PART III - IWGIA publications and general information 458

EDITORIAL

The year 2001 will go down in history as the year in which the technologically and economically developed Western world came face to face with its vulnerability and, overnight, became engulfed in fear, suspicion and hatred, in which armed revenge has so far been the only response envisaged. The terrorist attacks on the Twin Towers in New York and the Pentagon in Washington on September 11, 2001, and the deaths of some 3,000 innocent civilian men and women, radically changed the world overnight and, as the US administration and its allies get ever more deeply involved in their "war against terrorism", there is indeed cause for deep concern for the indigenous movement worldwide also.

The global and long lasting impact of the September 11 events can but seem out of proportion when compared with events that took place in other parts of the world during 2001. This holds especially true when talking about events that involve indigenous peoples, and this issue of *The Indigenous World* gives several examples of massacres, violent deaths and disappearances of indigenous peoples and indigenous leaders – Colombia is a case in point – events that are condemnable and abominable too but which, nevertheless, barely make the news and most probably will never make history.

The impact of September 11 has also been directly felt by indigenous peoples. In some cases, it has meant that important indigenous issues were taken off the table, as reported from Mexico; in others (e.g. India) the passing of a new anti-terrorism law is seen as a direct threat to indigenous organisations. In yet others, hostile governments and local authorities have taken the opportunity of the "war against terrorism" to accuse and castigate indigenous peoples of being terrorists when they are legitimately protesting against the violation of their fundamental rights, (see chapters on Chile, China, etc.) or are using excitation against Islam to persecute Moslem indigenous peoples (e.g. Burma).

With the prevailing worldwide "terrorist syndrome" it is indeed to be feared that indigenous peoples who merely struggle for self-determination and for their fundamental rights may in the future be unjustly accused of being terrorists and treated as such. This situation may well, in some places, degenerate into more oppression and even serious confrontation, and indigenous leaders will henceforward need all the political acumen they can muster in order not to give the authorities a pretext to clamp down on them and their fellow men.

Globalisation and neo-liberal economic policies are two other factors that are increasingly impacting on the situation of indigenous peoples. The Plan Puebla-Panama, which will affect indigenous communities throughout Mexico and Central America, is one example. In Russia, indigenous communities are facing increasingly tough competition from private enterprises over their land and natural resources. In other cases, rights acquired by the indigenous peoples are being directly threatened. In India, for instance, private mining companies are lobbying forcefully for an amendment to the 5th Schedule of the Constitution, which would make the leasing of land to outsiders in tribal areas possible. In Bolivia, the whole land reform process for which the indigenous population has struggled for years is being jeopardized by the government's sell-out to the cattle farming sector and large landowners.

In other parts of the world, indigenous peoples continue to be forced to relocate in order to make way for hydroelectric dams (e.g. in Laos, the Philippines, Chile), national parks (e.g. Bangladesh, India, Tanzania), or in the name of so-called "development", like the San of Botswana and the Mon-Khmer of Laos. Not surprisingly, the issue of forced relocation was high on the indigenous agenda during the consultations conducted in 2001-2002 by the World Bank in connection with the revision of their guidelines. Unfortunately, it seems as if the proposed revised guidelines will not be nearly as strong as they should be and even weaker than they were originally.

While this issue of *The Indigenous World* brings a number of country reports that show that the situation of indigenous peoples worldwide remains highly precarious, with important advances being consistently threatened, it also highlights a number of positive developments that have occurred over the period under consideration.

At local level, one such development worth mentioning is the several-month-long protest movement of the Adivasi and the Dalits in the state of Kerala (India), which ended with the government conceding to all the demands made by the Adivasi-Dalit platform, Samara Samithy, notably in terms of land distribution. Other examples include Cambodia, where a new land law recognizing indigenous land rights has been passed, and Nicaragua where the Awas Tingni land claims were recognised.

A major event in 2001 - 2002 was the birth of a new independent country - Timor Lorosa'e. After more than 24 years of Indonesian colonization and a liberation struggle which, on several occasions, seemed on the point of collapsing, this is indeed cause for joy and,

from IWGIA, we send our best wishes and hopes for the future to the people of Timor Lorosa'e.

At international level, there have also been some major achievements. In the Americas, the Inter-American Court on Human Rights (IACHR), which has the mandate to place binding obligations on all American states to comply with human rights standards, has been playing an increasingly important role in mediating and defending indigenous peoples' rights (see chapters on Panama, Paraguay and Nicaragua).

In Africa, an interesting process has been initiated within the African Commission on Human and Peoples' Rights (ACHPR), with the establishment of an ad-hoc group that will focus on the situation of indigenous peoples in Africa. Given the reticence of African governments to recognize the concept of "indigenous", this is a promising step forward that may open up the path for a process which, in the longer term, may give the commission a role similar to that of the IACHR.

At UN level, the designation of Rodolfo Stavenhagen as Special Rapporteur on the Situation of Indigenous People has been met with great expectations and will, in the future, be a significant contribution to the protection and recognition of indigenous peoples' fundamental rights.

The greatest advance, however, has been the establishment of the Permanent Forum for Indigenous Peoples under ECOSOC. This new high-level institution within the UN system is a breakthrough for indigenous peoples and will, hopefully, support them in meeting the many challenges of the years to come: the ongoing struggle for land rights and self-determination, for recognition and respect of their indigenous cultures and know–how, for acquisition of equal rights and equal opportunities.

This issue of *The Indigenous World* is no.16. From the very beginning - in 1986 - our goal has been to document as completely as possible the situation of indigenous peoples worldwide. Even though we are still far from this goal, we also feel that some progress has been made over the years. For this we wish to thank our many contributors and, at the same time, enjoin all those who feel there are still too many shortcomings to come forward with their suggestions and contributions so that we can keep improving our coverage of the indigenous world.

Diana Vinding
Coordinating Editor

ABOUT OUR CONTRIBUTORS

IWGIA would like to extend warm thanks to the following people and organisations for having contributed to *The Indigenous World 2001/2002*. We would also like to thank the contributors who have wished to remain anonymous and therefore are not mentioned below. Without any of these people's help, this book would not have been published.

PART I

The Arctic & North America

This section has been compiled and edited by Kathrin Wessendorf, Arctic Programme Coordinator at IWGIA.

Marianne Lykke Thomsen of the Greenland Home Rule Government, Foreign Affairs Office, is currently posted to Ottawa as Greenland's Representative to Canada. She previously worked for the Inuit Circumpolar Conference (ICC) and has been associated with IWGIA for many years. (*The Arctic Council*)

Mette Uldall Jensen is an eskimologist from the University of Copenhagen (autumn 2001). She has been an active member of the IWGIA national group in Denmark and took part in arranging the Second Indigenous Circumpolar Youth Conference in 1998. (*Greenland*)

Eva Josefsen is a Saami from Alta in Norway. She has a Master's in political sciences. From 1997 to 2001, she was a member of the Saami parliament in Norway. (*Sápmi - Norway*)

Mattias Åhren is a Saami lawyer from Sweden. He is head of the Human Rights Unit of the Saami Council. (*Sápmi - Sweden*)

Leif Rantala is a lecturer of Saami language and culture at the University of Lapland, in Rovaniemi, Finland. (*Sápmi - Russia*)

Olga Murashko is an anthropologist and co-founder of the IWGIA local group in Russia. She works in close collaboration with RAIPON on indigenous peoples and legal rights in the Russian Federation. (*Russia*)

Petra Rethmann is professor of anthropology at McMaster University, Canada. She has been working in the northern part of the

Russian Far East since 1992, and is currently looking at both the possibilities and limitations of democratisation for Chukotka's indigenous residents. (*Chukotka*)

Gordon L. Pullar, a Kodiak Island Alutiiq, is the Director of the Department of Alaska Native and Rural Development at the University of Alaska Fairbanks. (*Alaska*)

Jack Hicks lives in Iqaluit, Nunavut, where he works for the Government of Nunavut. (*Nunavut*)

North America

Michael Posluns is a consultant on Canadian parliamentary relations and legislative history. He maintains a watching brief on discussions of First Nations matters in the Canadian Parliament. He has recently completed his doctoral dissertation on First Nations testimony before Canadian Parliamentary committees entitled *The Public Emergence of the Vocabulary of First Nations' Self-Government*. (*Canada*)

Jim Edmonson has worked for aboriginal organisations at national, regional and community level since 1985. He has spent much of this time as an advisor and negotiator in talks with the federal and territorial governments on land claims and self-government. (*Northwest Territories*)

Martha McCollough works as an assistant professor in cultural anthropology at the Anthropology and Ethnic Studies Department of the University of Nebraska. Her research interests include the relationship between states and non-state societies. She is currently working on a book that explores terrorism prior to the reservation era in the United States. (*USA*)

Mexico, Central and South America

This section has been compiled and edited by Diana Vinding Mexico and Central America & Pacific Programme Coordinator at IWGIA, and Alejandro Parellada, South American Coordinator at IWGIA.

Araceli Burguete Cal y Mayor is a sociologist and researcher at the Centre for Research and Higher Studies in Social Anthropology (CIESAS) and advisor to the indigenous organisation ANIPA. ***Abel Barrera Hernández*** is an anthropologist and the

director of the Centre for Human Rights of the Montaña region in Guerrero, an NGO based in Tlapa. ***Ricardo Robles*** is a Jesuit priest and has lived with the Rarámuri of Chihuahua since 1963. He was an advisor to the EZLN during the San Andrés negotiations from 1995 to 1996 and has been a member of the follow-up Commission of the National Indigenous Congress (CNI) since 1997. *(Mexico)*

Santiago Bastos and ***Manuela Camus*** are social anthropologists and researchers at the Latin American Faculty of Social Sciences (FLACSO) in Guatemala. (*Guatemala*)

Dennis Williamson Cuthbert is an economist and director of the Research and Investigation Centre of the Atlantic Coast of Nicaragua, CIDCA. (*Nicaragua*)

Atencio López is an indigenous Kuna and lawyer. He is President of the NGO "Napguana". *(Panama)*

Ninoska Laya Pereira is a lawyer and the coordinator of the Human Rights Office of the Vicariate of Puerto Ayacucho, a consultant office to the Regional Organisation of Indigenous Peoples of the Amazon (ORPIA) and other indigenous organisations in the region. (*Venezuela*)

Efraim Jaramillo is an anthropologist and one of the most long-standing collaborators of the Colombian indigenous organisations. (*Colombia*)

Jorge Agurto is a social communicator who for years has been supporting indigenous communities and peoples in Peru in the defence of their fundamental rights. He was, until recently, head of the Indigenous Information Service SERVINDI (servindi@yahoo.com) but has now taken over the position of Technical Secretary of the Permanent Conference of the Indigenous Peoples of Peru (COPPIP), a position he was the first to hold some years back. He is a member of the Technical Secretariat of the Amazonian National Indigenous Commission (CINA) E-mail: jorgeagurto@hotmail.com (*Peru*)

Carlos Romero is a lawyer and director of the Centre for Legal Studies and Social Research (CEJIS) in Santa Cruz, Bolivia. ***Ana Cecilia Betancur*** is a lawyer and works in CEJIS as a volunteer from the Dutch Development Cooperation Service. (*Bolivia*)

Paulo Celso de Oliveira – Pankararu is a lawyer and ***Paulino Montejo Silvestre – Maia*** a communication advisor. Both work in the Coordinating Body of the Indigenous Organisations of the Brazilian Amazon, COIAB. (*Brazil*)

Rodrigo Villagra is an anthropologist and lawyer. He has worked for TIERRAVIVA, a Paraguayan NGO, since 1994. *(Paraguay)*

Morita Carrasco is an anthropologist and lecturer at the University of Buenos Aires, Argentina. She is the author of the IWGIA Document *Los Derechos de los pueblos indígenas en Argentina* (2000) and co-author, together with Claudia Briones, of the IWGIA Document *Pacta sunt Servanda Capitulaciones, Convenios y Tratados con Indígenas en Pampa y Patagonia, Argentina* (2000). (*Argentina*)

Álvaro Bello is an historian with a Master's in Social Sciences and is a researcher and specialist on indigenous affairs. He has been a consultant to various international bodies such as CEPAL and GTZ. He currently lives in Mexico where he is preparing his doctoral thesis. (*Chile*)

Australia and the Pacific

This section has been compiled and edited by Diana Vinding, Central America & Pacific Programme Coordinator at IWGIA.

Peter Jull researches and writes on indigenous politics in an international context in the School of Political Science and International Studies, University of Queensland, Brisbane, Australia. (*Australia*)

Jimmy Nâunââ, from Kanaky (New Caledonia), is Assistant Director – Decolonisation & Indigenous Rights at the Pacific Concerns Resource Centre (PCRC) in Suva, Fiji Islands. He has prepared the Pacific section on the basis of articles published throughout the year in PCRC's monthly newsletter and the *Pacific News Bulletin* (PNB) as well as other PNB sources. *(The Pacific)*

Asia

This section has been compiled, edited and partially written by ***Christian Erni***, Asia Programme Coordinator at IWGIA.

East and South East Asia

Masaharu Konaka has for several years worked for the Buraku Liberation League, Tokyo and is now doing translation work

152

for the Ainu People in Sapporo. ***Yupo Abe*** has been a member of the executive board of the Ainu Association of Hokaido since 1996. ***Robert E. Gettings***, an Associate Professor of Hokusei Women's Junior College, kindly checked and corrected the English sentences. *(Japan)*

Harald Bøckman, a Sinologist, is Research Fellow at the International Institute of Peace Research in Oslo, Norway. His main field of research is the historical emergence of Chineseness and the relation between China and her neighbours in an historical perspective. (*China*)

Charlotte Mathiassen is a social anthropologist and consultant on development projects. She has worked with Tibetan communities in the Himalayas and on Tibetan issues in general for many years. She is a long-term active member of the Danish Tibet Support Committee and a member of the Network for Indigenous Peoples in Denmark.*(Tibet)*

The Association for Taiwan Indigenous People's Policies *(ATIPP)* is an NGO established and administered by Taiwan indigenous activists, and working for the empowerment of Taiwan indigenous peoples. As a research and advocacy group, ATIPP seeks to promote the rights of the Taiwanese indigenous peoples. *(Taiwan)*

AnthroWatch is a Manila-based research and advocacy group working closely with indigenous peoples in the Philippines. ***Joan Carling*** is chairperson of the Cordillera Peoples Alliance (CPA) based in Baguio in the Cordilleras of Northern Luzon. ***Dario Novellino*** is international advisor to Bangsa Palawan, Philippines (Indigenous Alliance for Equity and Well-Being). He is currently affiliated to the Department of Anthropology at the University of Kent in Canterbury (UK), as well as to the Institute of the Philippine Culture, Ateneo de Manila University. *(Philippines)*

The chapter on ***Timor Lorosa'e/East Timor*** has been compiled by Diana Vinding, IWGIA, on the basis of **Torben Retbøll**'s IWGIA networking report from East Timor (2001) and his paper on "The Women of East Timor" (2002). Other sources have been the *Pacific News Bulletin*, published by the Pacific Concern Resource Centre, and information provided by **Maurizio Giuliano**, a journalist and expert on political sciences, which we gratefully acknowledge.

Emilianus Ola Kleden, is the Information and Communication Manager of the Secretarial Office of the Indonesian national indig-

1621

enous peoples' umbrella organisation AMAN (Alyansi Masyarakat Adat Nusantara). ***Øyvind Sandbukt***, a social anthropologist, has undertaken field research on a number of indigenous minorities in Sumatra, and is project adviser to the Sumatran NGO consortium WARSI (Conservation Information Forum). ***Rudy Syaf***, an agricultural economist by education, was formerly project coordinator and now executive director of WARSI. ***Adi Prasetijo*** is an anthropologist currently pursuing a Master's degree at the University of Indonesia, having previously worked as a field staff member with WARSI. ***Danilo Geiger*** is a social anthropologist currently working in the Department of Social Anthropology of the University of Zurich, Switzerland. He is one of the founding members of the Swiss National Group of IWGIA. *(Indonesia)*

Colin Nicolas is the coordinator of the Center for Orang Asli Concerns (COAC), Kuala Lumpur, Malaysia. *(Malaysia)*

Prasert Trakansuphakon is a Karen leader from Thailand, a senior staff member of the Inter Mountain Peoples Education and Culture in Thailand (IMPECT) Association and a member of the Asian Indigenous Peoples Pact (AIPP). ***Helen Leake*** has worked with IMPECT in indigenous and tribal communities for over five years. She is currently also working with the Assembly of Indigenous and Tribal Peoples of Thailand (AITT) on citizenship and legal status issues. *(Thailand)*

Sara Colm has been working as a journalist, researcher and human rights worker in Cambodia since 1992. She has written extensively about indigenous issues in Cambodia and is currently working on a book documenting the history of Cambodia's indigenous minorities with the Khmer Rouge in northeastern Cambodia from 1968-1979. ***Graeme Brown*** is an Australian volunteer who has been working in Ratanakiri province since 1999, supporting community--based natural resource development and an indigenous advocacy network. ***Justin MacCaul*** is an Australian who has been working in Ratanakiri, Cambodia since 2000. He is currently working on the Biodiversity and Protected Areas Management Project in Virachey National Park, developing communication and information systems. *(Cambodia)*

The chapter on ***Vietnam*** has been adapted in part from the Human Rights Watch report "Repression of Montagnards: Conflicts over Land and Religion," April 2002, which we gratefully acknowledge.

217

Ian Baird, originally from Canada, has been working on natural resource management and indigenous issues in South-east Asia for 15 years, and has been living in Laos for the last 10 years. He is President of the Global Association for People and the Environment, a Canadian NGO active in Laos. He is also the coordinator of the Canada Fund for Local Initiatives in Laos, the Canadian Embassy's small grants facility for NGOs and peoples' organisations. *(Laos)*

Debbie Stothard, a Malaysian, is the coordinator of Altsean-Burma. ***Queenie East***, a Briton, is the organization's Research Officer. Altsean-Burma (Alternative Asean Network on Burma) is a South-east Asian network of groups and individuals supporting human rights and democracy in Burma. It has a strategic women's program aimed at increasing the political profile of women in Burma. Its secretariat is in Bangkok, Thailand. *(Burma)*

Luingam Luithui, a Tangkhul Naga, is a human rights advocate. For twenty five years he has been actively involved in local and regional networking of indigenous peoples and building alliance with NGOs. *(Nagalim)*

South Asia

The Jumma Peoples Network *(JUPNET)* is an organisation established and run by indigenous Jummas based in various countries of Europe and elsewhere. JUPNET seeks to promote the rights of the indigenous Jummas through dialogue, negotiation and other peaceful means. ***Sanjeeb Drong***, a Garo from north Bangladesh, is the Secretary General of the Bangladesh Indigenous Peoples Forum, a national forum representing 45 different indigenous communities in Bangladesh. He has published extensively through books and the print media in Bangladesh on indigenous issues. *(Bangladesh)*

Parshu Ram Tamang is a Senior Lecturer of Economics in Sarawati Multiple Campus, Tribhuvan University, Kathmandu, Nepal. He is founding member, until recently General Secretary and currently an advisor of the Nepal Federation of Nationalities (NEFEN). He is also the President of Nepal Tamang Ghedung (NTG), and member of the United Nation's Permanent Forum on Indigenous Issues. *(Nepal)*

C. R. Bijoy is a human rights activist based in Tamil Nadu, south India. Over the last sixteen years he has been involved in and

associated with indigenous issues and organisations in India and written about these and associated matters. ***Samar Bosu Mullick*** is a political activist, teacher and researcher who has been working in solidarity with the indigenous peoples of Jharkhand for the last quarter of a century. He was one of the frontline people in the Jharkhand separate state movement. ***Ratnaker Bhengra*** is a lawyer and member of the Jharkandi Organisation for Human Rights (JOHAR) based in Ranchi, which works for autonomy within the Indian state. ***Linda Chhakchhuak*** is a journalist based in Shillong, Meghalaya, north-east India, and publisher of Grassroots Options, north-east India's first magazine on people, environment and development. *(India)*

Africa

This section has been compiled and edited by Marianne Jensen, Africa Programme Coordinator at IWGIA.

Hassan Idbalkassm is an Amazigh from Morocco. He is a lawyer and President of the Amazigh association "Tamaynut", which he founded in 1978. He is also the Vice-President of the "*Congrés Mondial Amazigh*", which has a membership of more than 70 Amazigh associations in North Africa and Europe. *(North Africa)*

Jeremy Keenan is currently Senior Research Fellow and Director of the Sahara Studies Programme in the School of Development Studies at the University of East Anglia, UK. Formerly a professor of social anthropology, his main area of research is the Sahara. He first began working amongst the Tuareg in 1964 and now works with them more or less continuously. He is the author of three books and some 50 articles and academic papers on the Tuareg. Contact: jeremkeenan@hotmail.com *(North and West Africa)*

Nyikaw Ochalla is an indigenous Anuak (Anywaa) from the Gambela national state in Ethiopia. He holds a BA in Management and Public Administration from Addis Ababa University. He is actively involved in human rights issues concerning the indigenous peoples of his own area as well as those of marginalized peoples living in the other states of Ethiopia. Contact: Ochalla@hotmail.com or Gambela_2000@yhaoo.com *(Ethiopia)*

Dorothy Jackson is the Africa Programme Coordinator of the Forest Peoples Project, the UK-registered charitable arm of the Forest

Peoples' Programme. The Forest Peoples' Project works to support indigenous and tribal forest peoples to secure their rights to lands, resources and sustainable livelihoods. (*The Great Lakes Region*)

Naomi Kipuri is a Maasai from the Kajiado district of Kenya. She is an anthropologist by training. Naomi Kipuri taught at the University of Nairobi and is now a development consultant. She undertakes research and development and is keen on development concerns and issues relating to human rights and the rights of indigenous peoples. *(East Africa and Kenya)*

Benedict Ole Nangoro is a Maasai from Kiteto in Tanzania. He holds an M. Phil in Development Studies from the Institute of Development Studies of the University of Sussex, UK. He is currently working with CORDS, a local NGO that works with indigenous pastoral Maasai communities on land demarcation, mapping, registration and collective titling. *(East Africa and Tanzania)*

Robert K. Hitchcock is a Professor of Anthropology and Geography at the University of Nebraska-Lincoln, USA. His most recent book is *Organizing to Survive: Indigenous Peoples' Political and Human Rights Movements* (2002, Routledge Press). (*Botswana and Namibia*)

Megan Biesele teaches anthropology at the University of Texas (Austin). She has long worked with Ju|'hoan San communities in Botswana and Namibia as an advocate and documentarian. She is the President of the Kalahari Peoples Fund. (*Namibia)*

Cecil le Fleur has been working for the "Griqua National Conference of South Africa" (G.N.C.) for the past 27 years and is now its coordinator. He is also the chairperson of "The Council of Headmen of the G.N.C" and "The National Khoi-San Consultative Conference" (N.K.C.C.), as well as an executive committee member of the National Khoi-San Council (N.K.C.). He is furthermore an executive committee member of "The Indigenous Peoples of Africa Coordinating Committee" (I.P.A.C.C.) where he has been involved in networking and advocacy amongst indigenous peoples throughout Africa since 1997. (*South Africa*)

201

PART II

Indigenous Rights

This section has been compiled, edited and partially written by Lola García-Alix, IWGIA Human Rights Programme Coordinator.

Rajkumari Chandra Roy is a Chakma and a lawyer. As an expert on indigenous issues, she has worked for many years in the International Labour Office where she was part of a two-member team responsible for establishing a new inter-regional technical cooperation project aimed at increasing awareness and application of ILO standards, in particular the Convention on Indigenous and Tribal Peoples (No.169). She is currently working as an independent consultant on international legal issues with emphasis on human rights, indigenous peoples, discrimination and gender issues. She is author of IWGIA Document 99: *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh* (2000). *(The Working Group on the Draft Declaration on the Rights of Indigenous Peoples)*

Lola García Alix is the Coordinator of Human Rights Activities at IWGIA. *(The United Nations: The Permanent Forum on Indigenous Peoples* and *The Special UN Rapporteur)*

Marianne Jensen is the Coordinator of IWGIA's Africa Programme. (*The African Commission on Human and Peoples' Rights*)

PART II

REGION AND COUNTRY REPORTS

THE ARCTIC

BEST COPY AVAILABLE

THE ARCTIC COUNCIL

The Arctic Council Ministerial meeting in Barrow (Alaska) in 2000 clearly emphasized the need for the Arctic Council to continue to cooperate closely with relevant regional and international bodies. Subsequently, the Finnish Chair has been very active in promoting the Arctic Region and the Arctic Council at numerous regional and international thematic conferences.

Presently, the Arctic Council is preparing for two major events in the fall of 2002.

Firstly, the Arctic Council, under the Finnish Chairmanship, is advocating that a strong voice be given to the Arctic Region and its peoples at the World Summit on Sustainable Development (WSSD), due to take place in Johannesburg in September of this year.

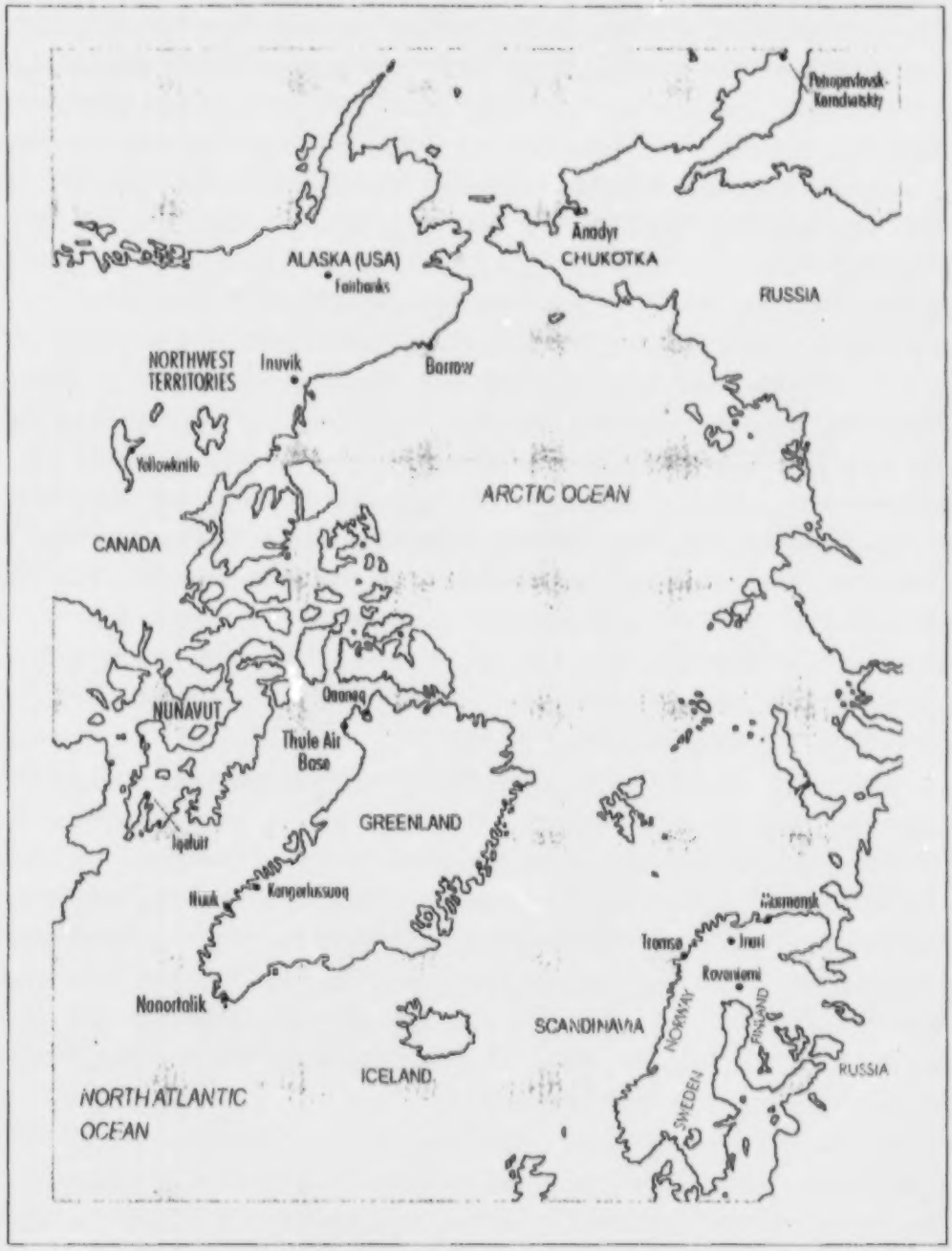
More specifically, the Arctic Council aims to highlight the unique cooperation between national governments and indigenous peoples in a high-level inter-governmental forum, which also features partnerships with non-Arctic states, parliamentarians, international and non-governmental organizations, regional bodies and research networks.

The Arctic Message, or Arctic Dimension of Sustainable Development, will build on the ongoing work of the Arctic Council to promote the sustainable development and protection of the Arctic environment, which is sensitive to the needs, aspirations and livelihood of the Arctic peoples.

Secondly, the Arctic Council is preparing its third Ministerial Meeting to be held in Inari (Finland) at the beginning of October. This meeting, which will mark the finale of a very active Finnish Chairmanship and the transfer of the Arctic Council responsibilities to Iceland, is also expected to deal with the recommendations from the WSSD with respect to setting standards and priorities for its sustainable development activities in the Arctic.

The Ministerial Meeting will furthermore be discussing proposals for adjustments to the Council's structure and work, based on ongoing consultations with members and participants. Finally, ministers will be deciding on the program of work for the coming two years in the environment and sustainable development working groups.

Whereas the long established environmental working groups and programs are quite successful in obtaining funding for environmental monitoring, assessment and action planning, it has proven difficult to get the same level of attention from governments and donors for initiatives under the Sustainable Development Program, except where activities are already part of a national program, such as is the case



with many health-related projects. This is why some members and participants argue in favour of some form of core funding and a permanent secretariat.

One comprehensive project under the Sustainable Development Program is the Survey on Living Conditions in the Arctic (SLICA), which has the objective of providing proper and much needed com-

BEST COPY AVAILABLE

parable statistical information across the Arctic Region. The comprehensive Survey is expected to make an important contribution to sustainable policy planning and development for the region.

The 10th anniversary of the Arctic Environmental Protection Strategy (AEPS) was celebrated with a successful conference in June 2001, in Rovaneimi (Finland) where the Declaration on the establishment of this important environmental co-operation was signed in 1991. It was at the Arctic Council Ministerial meeting in Nuuk (Greenland) under Danish Chairmanship, that the Arctic Indigenous Peoples first became accepted as Permanent Participants and true partners in the Arctic Council process in accordance with the provisions of the 1992 Rio Declaration on Environment and Development dealing with the promotion of indigenous peoples' effective participation in the achievement of sustainable development.

In the margins of the Arctic Council, there have been several conferences during the course of 2001. Notably, the Meeting on Youth Policy in the Arctic held at Rovaneimi in September (12-14) to discuss, review and promote the youth policy viewpoints in activities of the Arctic Council. At the beginning of November (1-2), a conference on Capacity Building was held back to back with the Senior Arctic Officials meeting and co-hosted by Canada and Finland. The objective of the conference, which also included youth representatives from Greenland, was to gather ideas and recommendations for the development of a capacity-building strategy and focus for the Arctic Council, as described in the Barrow Declaration.

In the summer (August 4-6) of 2002, the "Taking Wing - Conference on Gender Equality and Women in the Arctic" will be held in Inari. The conference, which is a joint Arctic Council and Nordic Council of Ministers initiative co-hosted by Finland, aims to raise awareness of the situation of women in the Arctic and to give voice to women to express their experiences, views and interests regarding future action in areas of concern.

GREENLAND

Greenland is a self-governing unit within the Danish realm. The first Danish colonial settlement was established in 1721 close to the current capital, Nuuk. Until 1953, Greenland was legally a Danish

colony and it was not until 1979, when Home Rule was established, that some kind of real autonomy was introduced. Greenland now has its own Home Rule Parliament and Government responsible for most internal matters. In the year 1999, the Home Rule Government established a self-government commission to investigate the possibilities for taking over more responsibilities from the Danish state. Core issues are foreign affairs, security matters, economic development and language policy. The latter is especially important to a population of only 56,000 inhabitants, 87 per cent of them being ethnic Greenlanders (Inuit).

Recent events

During the past year, a power struggle has been going on within the largest government party, Siumut (the Social Democratic Party). As a result, Hans Enoksen was appointed as new party leader thereby creating the situation of having a Home Rule Premier - Jonathan Motzfeldt – who is not leader of his own party. Alongside the change in party leader, Siumut adopted a new strategy for the equal development of all parts of Greenland. However, this may very well clash with the party's wish for more independence from Denmark, given that keeping the outlying districts alive is a costly affair. Another problem Siumut is facing is the creation of and plans for creating new parties such as e.g. the Women's Party (Arnat Partiiat) or a party that will take care of the hunters' and fishermen's interests. The distance between people's daily lives and the administration in Nuuk, added to Siumut's lack of ability to respond to the interests of its voters, seem to be the reason for these new parties, which will no doubt steal voters from Siumut in future elections. The unrest within Siumut partly explains the break-up of the coalition government between Siumut and the left-wing Inuit Ataqatigiit in late 2001. Instead Siumut established a new coalition with the conservative Atassut party.

In November 2001, Denmark held elections for the Danish Parliament and Greenland had to elect their two members. Those elected are Kuupik Kleist from Inuit Ataqatigiit (IA) and the former Greenland Premier, Lars Emil Johansen, from Siumut. The two politicians won the election by focusing on key issues such as independence, transfer of complete ownership of the subsoil and a renegotiation of the defence agreement between Denmark and the US. Neither of the two politicians wants to bind themselves to a Danish party like their predecessors did, as they want to be able to vote for what they feel is the best for Greenland. Instead, the two Greenlandic politicians have,

together with the Faeroese member of the Danish Parliament, created a North Atlantic Group.

With regard to foreign politics, the Premier of Greenland, Jonathan Motzfeldt (from Siumut), has met the new Danish foreign minister, Per Stig Møller. Among other things, they discussed the US airbase in Thule and the National Missile Defence (NMD) and decided to look through the case together if an enquiry should come from the USA. Another subject was the forthcoming Danish chairmanship of the European Union, which will be used to invite politicians from the EU to Greenland.

The language debate

In January 2001, a language conference was held in Kangerlussuaq focusing on subjects such as the language of the Greenlandic authorities; how the development of the Greenlandic language can be strengthened; what role the Danish language should play and whether Greenland should be mono- or bilingual. Most participants wanted the development in Greenland to be based on three languages: Greenlandic, Danish and English, which should all be strengthened in the public schools.

In February 2001, the Self-government Commission held a meeting in Nuuk where the language debate was again in focus. The meeting demonstrated that many Greenlandic-speaking Greenlanders were dissatisfied with the dominant role of the Danish language in the Home Rule administration, as well as in the educational institutions. The problem concerning the Home Rule arises, among other things, due to the fact that one third of the staff in the administration do not speak Greenlandic. Concerning the educational institutions, half of the Greenlandic youth are facing the problem of not mastering the Danish language well enough to get an education. The result is that even though only about ten per cent of the children in the public schools are monolingual in Danish, this group accounts for a massive majority in the high schools. To make the Greenlandic language the dominant educational language thus has long-term prospects. One solution could be to strengthen the development of Greenlandic as the main language but, at the same time, give a higher priority to the Danish language in the schools, as often noted by the Greenlandic press. A group of parents in Nuuk have decided to resolve the matter their own way by establishing a private school where the pupils will be taught both Greenlandic, Danish and English from the first day at school. Most of the children will be of mixed marriages and the par-

2785

ents believe all three languages are necessary to get on in society and in the educational system.

Mineral and Oil Resources

In the southern part of Greenland, in the area of Nanortalik, prospecting for gold has been going on since the 1980s, led by the Greenlandic company Nuna Minerals A/S and the Canadian company Crew Development Corporation. The final decision to establish a mine will depend on the price of gold on the world market and the profitability of the mine, which will be examined during the spring and summer of 2002. For the community of Nanortalik, a goldmine would bring employment and thereby strengthen the economy of the municipality. Nevertheless, some negative impacts might also be felt, affecting both the local community and the environment.

With regard to oil extraction, current prospects are not very good as the search for oil at Fylla Banke, west of Nuuk, turned out to be negative. As a result, the oil companies involved have given up their licences and no further investigation is planned for the moment.

The potential value of the seabed explains the renewed interest in the North Pole and the resources of the Polar Sea. Because of geological circumstances, Greenland/Denmark might be able to enlarge its nautical mile border from 200 nautical miles to 350. Russia, however, has already filed a rights claim to the North Pole and part of the Polar Sea with the UN Sea Rights Commission, while Denmark has not yet signed the UN Sea Rights Convention.

The Greenland Home Rule puts great expectations on the investigations of both oil, gold and other minerals as a means of making the economy, and thereby the country, more self-supporting and independent of Denmark. Furthermore, oil and minerals are seen as a way to remedy the all-embracing dependence on the fishing industry, which makes the country incredibly vulnerable in case of fluctuations in the living resources.

Trade and Industry

The expectations for profitable oil and mineral explorations might be even higher in the future as the large fishing corporation Royal Greenland A/S is facing significant financial problems. The company's

debt has increased from 2.3 billion in 2000 to 3 billion DKK in 2001 partly because of falling prices for the company's main product - shrimps - on the world market. Furthermore, three to five factories are in danger of closure, largely due to a lack of raw materials.

As a result of the crises in Royal Greenland A/S, the Home Rule - which owns the company - has decided to grant the company a 200 million Danish Crowns (DKK) subsidy. This is done in the knowledge that the survival of the company is vital to the employment and economy of Greenland. The 200 million DKK have been financed by the sale of another Home Rule-owned company, Greenland's major department store Pisiffik. The Home Rule has agreed to privatise a large part of Pisiffik and to make the business legislation more liberal in order to make it easier for anyone to establish a company. That the Home Rule has, at the same time, doubled the grants to both the Consumers' Advisory Council and the Board of Competition could be a sign of a more positive attitude towards private business, which has so far had a hard time in Greenland.

These openings towards the private sector come at a time when the Home Rule is facing a scandal regarding the Puisi A/S Company, which was to have produced seal sausages and seal oil pills for the Chinese market. The company was established in 1998 and began production in 1999 but, after only two weeks, the company faced significant financial problems. It turned out that Puisi A/S had paid for activities in a non-existent daughter company in China where neither factory nor market for the seal products existed. The managing director was fired and the company's payments were suspended. At the beginning of 2001, a report from the trustees criticised the managing director, the board, the members and the accountants for a number of actions and omissions concerning the company. The Puisi affair has cost Greenlandic society more than 50 million DKK and has been a hot topic of debate in the Greenlandic newspapers over the past year. People want the matter examined thoroughly and the responsibility apportioned. To some, the scandal is an example of the lack of responsibility in many of the Home Rule's corporations.

Living resources

In the autumn of 2001, a book discussing hunting and fishing in Greenland was published by a Danish journalist, Kjeld Hansen. The book has the not very flattering title of *"Farvel til Grønlands Natur"* i.e.

A Farewell to Greenland's Wildlife, and in it Kjeld Hansen criticises the way living resources are used in Greenland. By doing so, he questions a part of the Greenlandic self-conception of having an innate ability to manage the resources in a sustainable way. Although Kjeld Hansen is dealing with very sensitive issues, the book has on the whole been well received in Greenland and it contributes to the ongoing debate on the management of living resources.

One example is the discussion of new and more restrictive regulations on bird hunting that came into force on 1 January 2002 and that will restrict the hunting season. All relevant interest groups have taken part in the preparation: the fishermen's and hunters' organisation (KNAPK) the gamekeepers, the ornithological association "Timmiaq", Greenland Tourism, the police, the municipalities, the Greenland Institute for Natural Resources, the Department for Employment and the Department for Environment. The hunters have nevertheless expressed dissatisfaction and the whole matter has been of great discussion in the Greenlandic newspapers. The discussion has mainly focused on whether the regulations have been forced on the hunters - what they themselves argue – or whether the hunters' occupation has been taken into extensive consideration – what the Greenland Parliament argues. The discussion can be seen as an example of the constant struggle between hunters, biologists and wildlife managers and the ongoing debate on whose knowledge and whose ways of managing are the most correct. Furthermore, it reflects the hunters' fear for their occupation, and the biologists' fear for the animals, and the wildlife managers have to navigate a fine line between the two in order to protect both the hunters and the animals.

SÁPMI - NORWAY

As the most important voice for the Saami people in Norway, the Saami Parliament is dealing with a wide range of issues having to do with most areas of politics. These issues will eventually be brought onto the political common agenda of the national Norwegian Government. Different aspects of land rights have a high priority in

the Saami Parliament, as well as livelihood, questions related to presentation and development of the Saami language, and questions concerning children and education.

Elections

In September 2001, elections to both the national parliament and the Saami parliament took place. In the national parliament, the right wing parties obtained a majority. A coalition of three parties belonging to a politically liberal tradition formed a government with the support of the right wing *Framskrittspartiet* (Progress Party), which has a negative approach toward ethnic minorities in general and toward Saami rights altogether. In 1999, the Samefolkets Parti (Saami Peoples Party) was founded. This party stands for election to the National Parliament in the electoral district of the county of Finnmark. They were not successful.

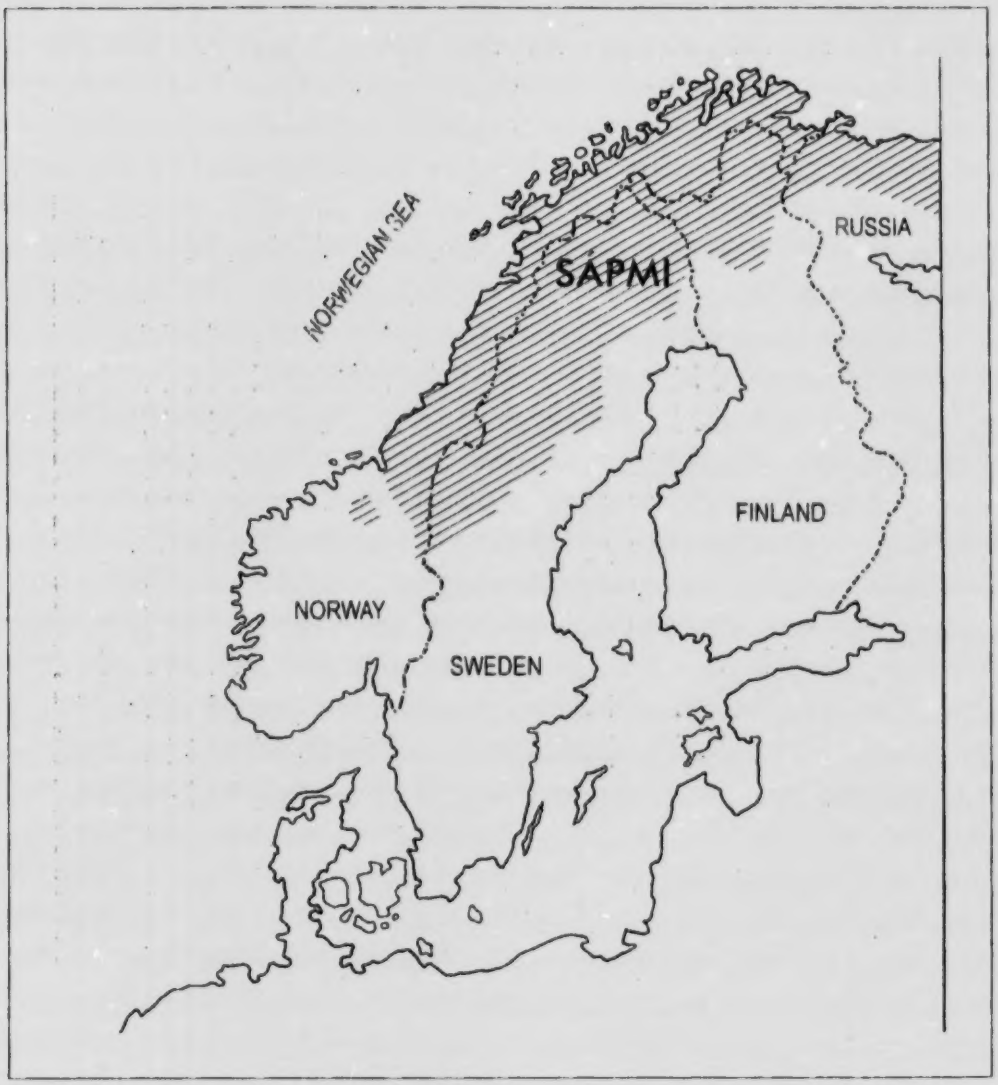
The Saami Parliament is elected on the same day as the national parliament. The Norwegian Saami Association (NSR) succeeded in retaining its majority in alliance with three other minor parties. Female representation in the Parliament has constantly been falling ever since the Parliament was established. In this last election, the number of female representatives fell from 27 % (10 out of 39) to 18 % (7 out of 39). There has as yet been no research into the reasons for this diminishing female representation.

Land rights

In 2001, the Government re-established the Saami Rights Committee. The last Committee was examining the Saami land claims in Finnmark County. This Committee's mandate is to examine Saami rights in the traditional Saami areas south of Finnmark County and to identify these areas according to Article 14-2 of ILO Convention no.169. The Committee consists of 16 members, both Saami and Norwegians, and has to present its report by 1 July 2005.

In 2001, the Norwegian Supreme Court ruled in two cases that can be seen as a turning point, and will have a major impact, on future developments in Saami land rights.

The first ruling came on June 21. The issue was concerning a dispute as to whether two reindeer districts (Essand and Riast/Hylling) had grazing rights for their reindeer in privately owned outlying



areas within the municipality of Selbu in the county of Sør-Trøndelag. The Supreme Court has previously, in similar issues, ruled in favour of the farmers that are against reindeer herding on their land. However, this time, the Supreme Court ruled in favour of the reindeer herders, based on their continued use over a long period of historical time (*alders tids bruk*).

On October 5, the Norwegian Supreme Court ruled that the local inhabitants in Manndalen / Olmmaivaggi in the county of Troms had the property rights to the Svartskogen-area. The state had claimed its ownership to this 116 sq.km. area. The locals argued that they had used the area as if they owned it and that they never had given this right away. Again, the Court's decision was based on their continued use over a long period

BEST COPY AVAILABLE

of historical time (*alders tids bruk*) and that this use had been practised as if they actually had been owners. The Court did not find it necessary to take ILO Convention No. 169 into consideration but it did highlight the fact that the decision was in accordance with the convention.

There is an ongoing conflict around the national armed forces' activity in the reindeer herding areas of Mauken/Blåtind (Troms County) and Halkavarre (Finnmark County). In Halkavarre a non-violent, one-day demonstration against this activity took place last autumn.

In 1998 and 1999, there were two complaints to ESA (EFTA Surveillance Authority) alleging that Norwegian legislation regarding angling in inland watercourses for foreign nationals was in breach of the European Economic Area (EEA) Agreement. On 29 June 2001, the ESA requested answers to specific questions and information on Norwegian legislation. In response, the Norwegian government pointed out that the contested Norwegian legislation did not fall within the scope of the EEA Agreement. Foreigners therefore do not have rights to angling in inland watercourses equal to Norwegian citizens.

Other significant events

The former President in the Saami Parliament, professor Ole Henrik Magga, was appointed representative for the Inuit and Saami areas to the Permanent Forum on Indigenous Issues in the United Nations.

Despite the fact that legislation on education gives Saami pupils the individual right to Saami language education wherever they live in Norway, several cases have proven that this right is hard to achieve in many communities.

The Saami cultural festival Riddu Riddu celebrated its tenth anniversary in 2001. This festival has a distinct Arctic indigenous profile, whereby other indigenous people are invited to contribute with their cultural expressions.

On November 26, one of the most well-known and profiled Saami artists both within Saami society and internationally, Nils Aslak Valkeapää, passed away. The Saami people lost a highly cherished and much loved artist.

References

Bull, Kirsti Strøm. 2001. "Nye høyesterettsdommer om samiske rettigheter". *Bårjås 2001, Populærvitenskapelig tidsskrift fra Arran – lulesamisk senter.*

Ryel, Anne Lise. 2001. "Gjenoppnevning av samerettsutvalget". *Bårjås 2001, Populærvitenskapelig tidsskrift fra Arran – lulesamisk senter*

Nystø, Sven-Roald. 2001. "Retten til innlandsfiske i Finnmark – ESAs behandling av klagesak mot Norge". Notat av 09.08.01. Sametinget i Norge.

The Norwegian Supreme Court's homepage:
http://www.hoyesterett.no/

The Saami Parliament in Norway's homepage:
http://www.samediggi.no/

SÁPMI - SWEDEN

This report aims to review developments of importance to Sweden's indigenous Saami people over the last year. The Saami people also inhabit Finland, Norway and the Kola Peninsula in Russia. Even though this report only covers Sweden, several of the developments outlined below are also relevant to members of the Saami population living outside Sweden.

The right to self-determination

Sweden has established a Saami Parliament, with the mandate to decide on certain matters of relevance to the Saami people. The Saami parliament constitutes a commendable effort to realize the Saami people's right to self-determination. However, the Saami parliament does not have the authority to take decisions on issues of most importance to the Saami people, such as issues regarding land rights and rights to natural resources. The government has recently submitted a report to the Swedish parliament, outlining how, in the government's opinion, Sweden is promoting human rights. In its report, the government acknowledges that the Saami people is an indigenous people and that this has implications e.g. with regard to the Saami people's right to self-determination. It remains to be seen whether this insight will have an impact on the government's future policy towards the rights of the Saami people.

Further, on December 14, 2001, a government investigation committee, *Rennäringspolitiska Kommittén,*[1] presented its report with a pro-

posal for a new reindeer management policy. The report contains suggestions on how to balance the interests of the Saami people with other forms of livelihoods that make use of the traditional Saami territory. The report also includes some proposals that increase the Saami people's self-determination in matters of real relevance to the Saami people. For instance, it suggests that the right to make decisions on divisions of winter pasture areas between different Saami villages should be transferred from the Swedish authorities to the Saami Parliament. The Saami parliament is also granted a wider mandate with regard to some other matters relating to reindeer herding.

The ILO Convention no. 169 and the Saami people's land rights

By the end of 2001, the government had still not responded to the recommendations of its own investigation regarding the ratification of the ILO Convention no 169, or to the criticism from the Committee on the Elimination of Racial Discrimination (CERD)[2] in the year 2000 (see *The Indigenous World 2000-2001*). Instead, it announced that it was awaiting the result of the investigations conducted by the *Rennäringspolitiska Kommittén*, mentioned above. In its report, the Committee includes a number of proposals that would strengthen the Saami people's land rights, but further measures will be necessary should Sweden adhere to the provisions of ILO 169.

There are thus signs of a possible strengthening of the Saami people's land rights in the future. However, while these proposals were being evaluated, the Saami people's land rights were being further eroded during 2001. In the case of the power plant company *Vattenfall*, which in 2000 filed an application to be registered as owner of three separate land areas within traditional Saami territory (see *The Indigenous World 2000-2001*), in December 2001, the Supreme Court decided not to try the Saami parties' appeal of the ruling of the Court of Appeals in the first of the three cases. The ruling of the Court of Appeal thus stands, and *Vattenfall* will be registered as owner of traditional Saami territory. In a ruling of January 2002, the Court of Appeal reached the same conclusion in the second of the three cases.

Reindeer husbandry is one of the main traditional livelihoods of the Saami people. The practice of reindeer husbandry is paramount to preserving the Saami culture. Even if not recognized as owners of their traditional land, under Swedish legislation the Saami people is allowed to pursue reindeer husbandry in areas they have inhabited *"since time immemorial"*.[3] The legislation does not define, however, which these areas,

in the government's opinion, are. This uncertainty has resulted in several conflicts, particularly in the winter pasture areas, which the Saami people nowadays share with the non-Saami population. There are seven cases pending before Swedish courts, in which non-Saami claim compensation from reindeer herders because of their reindeer grazing on territories to which the non-Saami hold title but which, also, according to the reindeer herders, form part of Saami traditional winter grazing areas.

During 2001, an appointed mediator tried to come up with a proposal by which the reindeer herders agree to pay some compensation to the landowners for the reindeer grazing on "their" land. If an agreement is reached, the government has indicated that it might be prepared to compensate the reindeer herders for at least some of these fees. Moreover, in December 2001, the Swedish government appointed a long-awaited committee with the task of investigating which areas constitute traditional Saami territories. The aim is to avoid further court proceedings regarding which land the Saami people has inhabited since time immemorial.

Meanwhile, on February 15, 2002, the Swedish Court of Appeal ruled on the first of the seven cases. Concurring with the Court of First Instance, the Court of Appeal held that the land areas in question did not constitute traditional Saami territory, and that the reindeer herders would thus have to pay compensation to the landowners for the reindeer grazing on that land. Obviously, the ruling will have a detrimental effect on the reindeer herding industry. What upsets the Saami community the most is the heavy burden of proof that the courts have placed on the Saami parties. The reindeer herders tried to explain the prerequisites for reindeer herding, and that it was almost impossible for a culture that aims to live in harmony with the land, and leave no traces thereupon, to prove its presence in a particular land area. The courts were not convinced by this reasoning. A major Swedish newspaper referred to the ruling of the Court of Appeal as "racist".

Together with the lawsuits described above, predatory animals, such as wolfs, wolverines, lynxes and brown bears, continue to constitute the most severe threat towards many reindeer herders. The Saami people has long argued for a cap on how many killed reindeer each reindeer herder should have to sustain and that adequate compensation should be paid for reindeer killed. No progress was made in this regard during 2001.

Hunting and fishing rights

Historically, hunting and fishing rights in the areas the Saami people traditionally inhabit were vested in the Saami people alone, and were

first regulated in the late 19th century. The first Reindeer Grazing Act of 1886 transferred the right to subcontract hunting and fishing rights from the Saami people to the government, the reason being that the Saami people was deemed incapable of administrating its own hunting and fishing rights. Swedish authorities thereafter administered the Saami people's hunting and fishing rights for about 100 years. Then, in 1992, the government suddenly announced that it was no longer subcontracting the Saami people's, but the *state's*, hunting and fishing rights. Legal scholars have referred to the regulation as a confiscation of the Saami people's hunting and fishing rights. In the concluding observations on Sweden in 2000, CERD particularly stressed its concern over the Saami people's hunting and fishing rights.

When *Rennäringspolitiska Kommittén* recently submitted its report, referred to above, it announced that it believed that the hunting and fishing rights would be better investigated separately. It therefore recommended that yet another investigator be appointed. This will not, however, be a political investigation. Instead, the investigator will survey the question of the Saami people's hunting and fishing rights solely from a legal viewpoint.

Cultural rights - the Saami Language Act and Saami television

The Swedish government has recently announced that it is considering expanding the scope of the Saami Language Act[4] to apply to the whole Saami area following criticism by, among others, CERD.

Further, during 2001, the Swedish state television began broadcasting a daily Saami news program. The news broadcast is in the Saami language, subtitled in Swedish.

Notes and references

1 SOU 2001:101 – *En ny rennäringspolitik – öppna samebyar och samverkan med andra markanvändare. Betänkande av Rennäringspolitiska Kommittén.*
2 CERD Document CERD/C57/CRP.3/Add.2
3 In Swedish: *"urminnes hävd"*
4 In Swedish: *Lag (1999:1175) om rätt att använda samiska hos förvaltningsmyndigheter och domstolar.*

SÁPMI - RUSSIA

The Russian Saami have worked actively in 2001 with both politi cal and cultural matters. The Saami together with the Regional Duma of Murmansk County have worked out a county (*oblast*) law about the legal status of the indigenous peoples of the Murmansk county. On July 11th the Duma of the Murmansk region adopted a regulation on the territory that has traditionally been used by the Saami people and should be reserved for them. On the base of that regulation the territory around the holy lake Sejdjaur was declared a protected Saami area.

Much of the Saami political and cultural work was accomplished by the Saami Public Organization of the Murmansk Region (OOSMO). It cooperated with the Danish organization Infonor, which helped OOSMO to get an office and equipment.

On 23 May the Russian language edition of the research report *Saami Potatoes: Living with Reindeer and Perestroika*, by Michael P. Robinson and Karim-Aly S. Kassam was presented in Moscow by the former Soviet leader Mikhail Gorbachev. It was financed by the Gorbachev Fund and was a joint Canadian-Kola Saami project. The report offers a Canadian-Saami vision of how co-management could flourish in post-perestroika Russian society. It is the story of the struggle of the Saami to protect their traditional lands and their reindeer.

In 2001 the Ethnic Center in Lovozero arranged various courses and meeting, for instance a course for unemployed Saami women and a course on bone, horn and wood carving with a Norwegian Saami teacher. The Center participated in a cultural festival in June in Rovaniemi, Finland. It also arranged a meeting for the former inhabitants of Voronje, a village situated between Lovozero and the northern coast, which they were forced to leave in the 1960´s when it was flooded due to the construction of a power station.

The sport fishing in the Saami rivers continued in 2001. The rivers are rented to foreign fishing companies for the cost of 4,300 to 7,900 dollars per week. Most of the fishers come from the USA and Scandinavia. The Saami are practically being pushed out of the fishing places on their homelands.

The situation of the reindeer herders was worse than the year before. This is due to the difficulties to sell the reindeer meat. Many reindeer herders lost their work. Some Russian Saami reindeer herders have visited Norwegian colleagues in order to improve the situation at home.

The Russian Saami are actively participating in the work of the Association of Small Peoples of the Russian North. The situation of

the Russian Saami can be characterized as follows: Economically life is getting worse, politically the situation is as before and culturally things are improving.

THE INDIGENOUS PEOPLES OF RUSSIA

Social, economic and environmental processes now underway in the areas inhabited by indigenous peoples have shown evidence that the rights and interests of indigenous peoples' communities are being ignored both by the government and the local authorities.

In October 2001, the Ministry for the Affairs of the Federation, National and Regional Policy was abolished and its functions regarding indigenous peoples were transferred to the Ministry of Economic Development and Trade. Tangible cooperation with this Ministry, as well as with the Ministry of Natural Resources, has failed to take shape. All the initiatives of the Russian Association of Indigenous Peoples of the North (RAIPON – the national umbrella organization of indigenous peoples in Russia), in the sphere of the defence of indigenous peoples' rights at government level have drowned in a flood of bureaucratic correspondence.

The indigenous peoples' rights outlined in Federal legislation have been systematically violated in the areas they inhabit. These violations take place in accordance with a very complicated scheme and, unfortunately, are not subject to court examination in the majority of cases. The point is that the local authorities are being guided in their practical activities primarily by temporary instructions issued by the government rather than by Federal laws. These instructions, alias and enforceable enactments are of a provisional nature. Quite commonly, they contradict the existing Federal legislation. However, to prove this in court and to cancel the inconsistent enforceable enactment is a time-consuming operation requiring substantial legal backup.

For instance, in April 2001 the State Fishing Committee issued a regulation regarding the order giving users licenses to fish anadromous species on a tender basis. Contestants were faced with high demands regarding their organization of fishing and fish processing. Indigenous peoples' rights to priority licensing were not mentioned in that regulation despite the fact that they had been envisaged by the Federal law *"On Fauna"*.

Besides, the greater number of quotas remained in the hands of the state, while the regions received a lesser number. However, it is for the regions to distribute the quotas among the indigenous peoples. Referring to this government regulation, the regional authorities put out all the quotas for the tender and invited the indigenous peoples to participate. The majority of communities and indigenous businesses surely failed to compete in terms of equipment with solid industrial fishing companies and, therefore, did not gain any licenses. While RAIPON tried to prove the illegitimacy of the regulation and the government replied that the regulation did not infringe upon the indigenous peoples' interests, the fishing season (to fish anadromous species) of 2001 was over and the indigenous peoples of the Far East were left jobless and without any fish.

Territories of traditional natural resource use

Despite the indigenous peoples' communities appeal to the government regarding the formation of traditional subsistence territories, not a single traditional subsistence territory has been established since the Federal law *"On Territories of Traditional Natural Resource Use (Traditional Subsistence Territories) of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation"*, came into effect on May 11, 2001. Meanwhile, the government explains its inertia by "unavailability of essential legislative acts regulating the order of establishing traditional subsistence territories of Federal significance as well as specification of the system of rules applicable to their functioning".[1] There is no indication in the letter as to why such enforceable enactments have not been formulated and when indeed they will be drawn up.

RAIPON, with the help of lawyers, prepared some drafts of the necessary enforceable enactments and handed them over to the government in October 2001 but until now RAIPON's initiative has been roaming the corridors of bureaucratic letter-writing.

At the same time, in 2000 and 2001, during the period of formulation and adoption of the above-mentioned Federal law, cases of hasty abolition of the formerly established traditional subsistence territories, with the approval of regional authorities, became increasingly frequent.

In the Evenk Autonomous Area, for example, documents of 55 kinship communities concerning their lineage-based kinship land parcelling dating back to 1992-1995 were declared null and void by a single ordinance # 152 dated June 23, 2000 issued by the Area's

Governor. In the opinion of the Evenk Area's organizations of indigenous peoples, this decision was due to the beginning of oil and gas prospecting in the Area. Only one kinship community succeeded in obtaining copies of documents concerning the withdrawal of kinship lands and in lodging, with RAIPON's assistance, a protest against the unlawful ordinance. The unlawful decision with regard to that community was revoked. However, it was impossible to get documents concerning the other kinship communities.

Examples from the regions

The withdrawal of lands previously assigned to indigenous peoples is a flagrant violation of their rights to traditional natural resource use. The Governor of the Koryak Autonomous Okrug issued ordinance # 60 on March 14, 2001 revoking ordinance #317 (1998) issued by his predecessor, on "The Establishment of the 'Tkhsanom' Traditional Subsistence Territory in the Tigilskiy District of the Koryak Autonomous Area". The Tkhsanom Traditional Subsistence Territory was established in compliance with the law *"On Traditional Subsistence Territories in the Koryak Autonomous Area"* at the request of the Union of Communities of Indigenous Peoples and Non-Natives of the Villages of Kovran, Ust'-Khairyuzovo, Khairyuzovo and in accordance with resolution #136 (1998) by the Tigilskiy District administration. The possibility of a new governor revoking an earlier decree shows the weakness in the implementation of the current laws...

At the same time, the construction of a natural gas pipeline is underway to the south of the Tkhsanom territory. The pipeline construction started in 1999 without any prior environmental impact assessment, public hearing or argument and reconciliation with indigenous peoples' organisations. The pipeline stretches from north to south across the Tkhsanom territory, crossing the upper reaches of more than a hundred spawning rivers and hunting grounds known to have been traditional subsistence areas of indigenous peoples. Pushing ahead with this pipeline construction envisaged to supply Petropavlovsk-Kamchatskyi with gas, the administration of the Kamchatkan region, with the government's tacit consent, has violated all the standards with regard to observing the rules of environmental security, ecological impact assessment and the rights of population to information. The coastal areas of the Tkhsanom territory and the adjacent area of the Sea of Okhotsk are viewed as prospective zones of oil and gas production. The lease of a section of Samarga forests in

the Primorskiy Territory, since 1991 reserved as an ethnic area inhabited by the Udeges, to a timber cutting company in March 2001 is a case similar to the above examples.

Twenty-six percent of the total territory of the Khanty-Mansi Autonomous *Okrug* was given to kinship communities of the Khants and Mansis in 1992-1993 as their kinship lands for gratuitous and termless use with the right to lease them out to other users. As of January 1, 2002, 47 percent of kinship lands happened to be leased out on a long-term basis to oil-drilling companies. The indigenous population, given one-time compensation for leasing out their lands in the form of propeller-driven sledges, wireless and audio equipment, has now found itself without means of existence. The majority of the indigenous population is jobless, living like beggars on the outskirts of towns and industrial settlements in the hope of promised apartments and compensation. Their native lands have been disfigured by geological prospecting, drilling rigs and forest fires and are unsuitable for traditional natural resource use.

Land code

In May 2001, the Land Code of the Russian Federation was adopted by parliament, practically at the same time as the law on traditional natural resource use. The Code envisages the right to acquire land as private property. The priority right to acquisition is given to those already having this or that kind of right to hold parcels of land. The process of leasehold legalization practically without payment for the land in industrial use on traditional subsistence territories of indigenous peoples thus became extremely intensive in 2000 and 2001.

Unfortunately, groups of indigenous peoples dispersed all across the great vast areas, cut off from administrative centres by hundreds of miles of impassable roads, are more often than not left uninformed about the legal status of their native lands. They keep using their lands and natural resources on the basis of traditional law. Their fathers and grandfathers lived there. Under the tsars, their lands were administered by kinship boards, under the Soviet power they were incorporated into collective and state farms. Later, they became lands of kinship communities. Now they can become the private property or long-term leasehold property of extractive companies.

At present, indigenous peoples' communities, frequently without knowing it, are engaged in a tough competition with private capital

for their lands and natural resources. Unfortunately, there has been no tangible state support, at least not in the form of implementation of laws concerning indigenous peoples' rights.

Projects of indigenous organizations that are funded through foreign partners make it possible for indigenous peoples' representatives to acquire the necessary legislative information, at least partly, during workshops and courses, in order to know how to defend their rights, to get information about possible ways of community development and to share information about environmental problems in their regions. However, these projects are far from being able to cover the entire spectrum of activities involved in the defence of indigenous peoples' rights. These rights are not sufficiently reflected in federal legislation. A sizable effort is required for its improvement and expansion taking due account of proposals coming from indigenous peoples themselves.

Much work lies ahead in the Parliament. Indigenous peoples' communities are too dissociated, the distances are too great and the conditions and problems in the regions differ too much. There must be far more workshops, training courses, local information centres and

The *subjekty* (provinces) of the North, Siberia and Far East of the Russian Federation

1. Murmanskaya Oblast
2. Nenets Autonmous Okrug
3. Republic of Komi
4. Yamal-Nenets Autonomous Okrug
5. Khanty-Mansi Autonomous Okrug
6. Taymyr Autonomous Okrug
7. Republic of Sakha-Yakutia
8. Chukotsky Autonomous Okrug
9. Koryaksky Autonomous Okrug
10. Kamchatkskaya Oblast
11. Magadanskaya Oblast
12. Khabarovsky Kray
13. Primorsky Kray
14. Sakhalinskaya Oblast
15. Evreyskaya Oblast
16. Amurskaya Oblast
17. Aginsky Buryatsky Autonomous Okrug
18. Republic of Buryatia
19. Ust-Ordynsky Buryatsky Autonomous Okrug
20. Evenkisky Autonomous Okrug
21. Altaisky Kray
22. Krasnoyarsky Kray
23. Republic of Altai
24. Republic of Tyva
25. Republic of Khakassia
26. Kemerovskaya Oblast
27. Novosibirskaya Oblast
28. Tomskaya Oblast
29. Omskaya Oblast
30. Tyumenskaya Oblast
31. Sverdlovskaya Oblast
32. Moskva
33. Saint-Petersburg
34. Arhangelskaya Oblast
35. Republic of Karelia

BEST COPY AVAILABLE

BEST COPY AVAILABLE

well-trained leaders in the regions. Russia's indigenous peoples have entered a new phase in their development: they have been granted rights admitted by law and they must learn how to use them in practice and how to defend them in case of need.

The work of RAIPON

The years 2001 and 2002 have been extremely contradictory for the indigenous peoples of the North, Siberia and the Far East.

On the one hand, the indigenous peoples' movement, through RAIPON, has gained a greater degree of recognition among Russia's state authorities. In April 2001, RAIPON convened its 4th Congress at the Presidential Palace in Moscow with more than 400 delegates from all areas inhabited by indigenous peoples attending. Representatives from all the state bodies, the government and parliament delivered speeches bearing more resemblance to reports summing up their efforts for the welfare of indigenous peoples.

The RAIPON leadership has been received at the highest level in the Ministries of Economic Development and Trade, and the Affairs of the Federation, National and Regional Policy. At government level, agreements have been reached between the above Ministries and RAIPON concerning their cooperation. In December 2001, RAIPON President, S.N. Kharyuchi, was awarded the Order of Friendship personally by Russia's President V.V. Putin.

Note and sources

1 Quote from letter # 29/22-1 dated January 1, 2002, written by the First Deputy Minister of Economic Development, Mr. I.S. Materov to the president of the Association of Indigenous Peoples of the North, Siberia and the Far East, Mr. S.N. Kharyuchi.

"Mir korennykh narodov – Zhivaya Arktika" nos. 5, 6-7 and 8, 2001, is the general source of this chapter.

CHUKOTKA

On December 24, 2000, the Chukotka Autonomous Region in the far east of Russia experienced a shift in regional and administrative power. Previously run under the auspices of autocratic governor, Aleksandr Nazarov, the region is now governed by Roman Abramovich. It remains, however, to be seen if the situation of the region's indigenous residents will improve, for the new governor has already assumed a number of different roles.

First, Roman Abramovich is Chukotka's latest manifestation of altruism and care. In summer 2000, he paid for hundreds of indigenous children from impoverished communities to spend the two summer months of their school vacation in well-staffed camps on the Black Sea. Jet-planes were flying back and forth between Anadyr and the Black Sea, financed by his personal wealth. The new governor, too, sends "humanitarian aid" in the form of food, clothes, and shoes, but also candles and fishing rods, to Chukchi villages in Chukotka. Yet there is one article that Roman Abramovich will not give: money. It is, however, this latter, indigenous residents argue, that they so urgently need. Money not only buys products and food, it also buys technical tools and mechanical devices that could help them to revitalize their own income-generating activities such as, for example, reindeer herding.

Why is Roman Abramovich providing all of this "assistance"? A look at his second incarnation might provide the answer. In Russia, and particularly Chukotka, Abramovich is better known as one of Russia's oligarchs: the key beneficiaries of the economic reign of the few who have decided Russia's economic fate since the beginning of the 1990s. Together with other members of this economic elite, he reached his apogee in 1996 when "the oligarchs" received important slices of state property at extraordinarily low prices in return for their collective decision to underwrite and finance Yeltzin's re-election campaign. The move guaranteed Abramovich's apotheosis to an "oil baron." He currently holds more than fifty percent of the shares of Sibneft (Siberian Oil), one of Russia's most powerful companies. Although many indigenous residents feel grateful for the help Abramovich provides, there is also increasing concern that he will want to exploit Chukotka's rich oil reserves without consulting the communities who live on these lands.

In this volatile political environment, it has been quite dangerous for Chukotka's indigenous population to argue for social justice and self-determination. Even while the newly democratized Russian gov-

ernment has opened up debates on issues of land rights and legal reforms, Chukotka's government has continued to use intimidating tactics to threaten indigenous critics. And although the current regional government disavows such practices, it thwarts aspirations to greater social justice and rights by fostering unequal relations of dependency. Since democratization, one of the key issues for indigenous organizing in the Chukotka region has been the search for political possibilities in an environment that seeks to silence or undermine indigenous debates. In the Chukotka peninsula, some of the most compelling issues for indigenous people include poverty, land rights and community participation. From the vantage point of the present, the challenges are formidable. Most likely, there will be a variety of futures and paths before the heralding of indigenous social justice in Chukotka.

ALASKA

Of the 630,000 inhabitants of the state of Alaska, approximately 16% are indigenous, belonging to different Athabascan groups, Inuit (Yupik and Inupiak), Aleut and Tlingit. The Inuit and Aleut communities are located on the coast or along the major rivers, the Athabaskan communities in the interior and the Tlingit along the south-eastern coast.

The Alaska Native Claim Settlement Act (ANCSA) was established in 1979 giving certain rights to indigenous peoples in exchange for the extinguishment of aboriginal rights to land and territories. Under ANCSA, the indigenous peoples own ("fee simple title") 11% of the state of Alaska's land mass. The beneficiaries are shareholders of village and regional corporations who own the surface land and (regional corporations) the subsurface land. The corporations have been involved in oil development, logging, tourism, real estate investment and many have also supported educational and cultural activities of their stakeholders. Indigenous communities have their own tribal governments. Their jurisdiction is limited to certain legal, cultural and social areas and does not include rights concerning the territories as such. A few indigenous communities that had status as

indigenous reserves decided in 1979 not to be a part of ANCSA but to keep their special status.

Alaska tribal leaders sign Millennium Agreement with State of Alaska

Representatives from more than 80 federally recognized Alaska indigenous tribes signed an agreement with the State of Alaska on April 11, 2001 under which a framework was provided for tribes and the state to work together on a "government-to-government" basis. The document, called the Millennium Agreement, makes it possible for the tribes and the state to work together to improve the delivery of essential services to Native villages.

For many years, the State of Alaska refused to acknowledge the existence of tribes in Alaska despite their recognition by the federal government, which maintains a government-to-government relationship with recognized tribes in Alaska. Under this relationship, many millions of dollars of federal money is contracted to tribes for the provision of a wide range of health and social service programs.

In 1993, Ada Deer, the Assistant Secretary of the Interior for Indian Affairs in the Clinton administration, officially recognized 227 Alaska tribes. This action was followed by an act of the U.S. Congress in 1994 that affirmed the tribes' existence. In 2000, the Alaska Supreme Court reversed a long-standing position and acknowledged the existence of federally recognized tribes.

"This agreement begins a whole new era of Tribal-State relations built upon the principles of mutual respect and acknowledgement," Alaska Governor Tony Knowles said during the signing ceremony. "It carefully lays out the framework for an effective and orderly partnership as we work together to better meet the needs of Alaskans, especially those who live in rural Alaska. With this agreement, we acknowledge something that tribal leaders have known all along that their governments are the modern day expressions of the oldest, continuous political entities in North America."

"This is a historic time for tribes," said Mike Williams, Chairman of the Alaska Inter-Tribal Council. "This is the first time there is a working relationship established to improve the quality of life in our tribal communities. It opens up opportunities for the state and the tribes to do something about problems in our communities."

On December 10, 2001, the leaders of the Alaska State Legislature appealed to Gale Norton, the Secretary of the Interior in the

Bush administration, to review the federal policy towards Alaska Natives.

They contend that Congress has established an "Alaska Native policy that is quite different from the Native American policy Congress established for the forty-eight contiguous states". The foundation for their claims is the Alaska Native Claims Settlement Act of 1971 under which state-chartered corporations were required to be formed by Alaska Natives in order to receive the settlement. In their request to Secretary Norton, the state legislature leaders state that they do not believe that Congress intended that Alaska Native villages be recognized tribes as "distinct political entities whose governing bodies possess governmental authority and sovereign immunity".

Alaska Governor declines to appeal in Katie John case

In a reversal of a previous position, Alaska Governor Tony Knowles announced in August 2001 that the State of Alaska would not appeal to the U.S. Supreme Court to have the Ninth Circuit Court of Appeals ruling overturned in the long-standing Katie John case.

On May 8, 2001 the Ninth Circuit Court had ruled in the case, *Katie John v. State of Alaska*, that Katie John, an 86-year-old Ahtna Athabascan grandmother, had the right to continue to subsistence fish at her camp near the headwaters of the Copper River as she had done most of her life. The Ninth Circuit ruling left only one option for the State of Alaska and that was to appeal to the U.S. Supreme Court. An extended deadline for such an appeal was granted, making it October 4.

In July, Governor Knowles visited Katie John at her fish camp. The widely publicized visit seemed to be a turning point in the case. The articulate and outspoken grandmother, who, in living a traditional life had never learned to read or write, presented her case directly to the governor. "This subsistence business, I tell you. You know, we used to have Indian law. In those days, we don't see white man, or white people, around. Alaska is just Native. All different Natives in Alaska. They got their own law for their game, for their village, all got their own different law. People always help each other," she told the governor.

On August 21, 2001, over 4,000 people marched through the streets of Anchorage, Alaska's largest city, in support of Katie John and urging Governor Knowles not to appeal against the decision to the Supreme Court. Surveys continued to show that a majority of Alaskan citizens, Native and non-Native alike, supported the right of people

who depend on subsistence foods to have priority to those foods in times of shortage.

"This case has been in the courts for 10 years during which the state has lost its argument five times," Knowles said. "This includes three appeals my administration has pursued, one of which was to the U.S. Supreme Court."

"I cannot oppose in court what I know in my heart to be right," Knowles said. "I know – we all know – what Katie John does is not wrong."

Leaders of the Alaska State legislature failed in their attempt to take an appeal to the U.S. Supreme Court despite the governor's decision not to. It was ruled that only the governor had the standing to take the case to appeal.

Paint ball attacks on homeless Alaska Natives shocks Alaskans

An attack on homeless Alaska Natives in Anchorage in January 2001 shocked Alaska and the entire U.S. Three young white men drove the streets of Anchorage looking for Alaska Natives to shoot with paintball guns, shooting frozen paintballs. The three videotaped the shootings along with their own commentary. A voice on the video tape, made public after the tape was confiscated by police, said they were hunting down "...Eskimos...otherwise known as muktuks".

One of the victims, a homeless Native man who was walking along a sidewalk, was shot several times by the frozen paint balls. When he complained to the police he was arrested and charged with disorderly conduct. He served 10 days in jail as a result. He later filed a lawsuit against the young men and their parents.

The incident brought national attention to racism in Alaska with CNN and other national networks coming to Alaska to cover the case. The incident led to the governor of Alaska appointing a special commission on tolerance and to the U.S. Commission on Civil Rights holding public hearings on racism and hate crime in Alaska.

The Arctic National Wildlife Refuge (ANWR)

The Alaska National Interest Lands Conservation Act (ANILCA) was finalized in December 1980 and designated the 1.5 million acre Coastal Plain within the Arctic National Wildlife Refuge (ANWR) a study area, to be evaluated for its oil and gas development potential. The resource

evaluation, conducted by the Department of Interior, was released in 1987 and recommended that Congress open the Coastal Plain for oil and gas exploration and development. In 1995, the U.S. House and Senate approved Coastal Plain Development as part of a balanced budget act but the entire measure was vetoed by President Clinton.

During 2001, extensive discussions about a new energy legislation in the United States took place. The bill calls for more oil and gas drilling, new conservation measures and energy infrastructure upgrades. One of its most controversial proposals is drilling in the Arctic National Wildlife Refuge (ANWR). The discussions included different opinions about the substantial risk to caribou and other wildlife. The Porcupine caribou herd that has its breeding ground in ANWR was the center of the dispute and of concern to many indigenous peoples in the interior of Alaska and in Canada. However, the dispute also included the arguments of some indigenous communities that they should be able to develop their privately owned lands if the energy bill were passed.

In August 2001, the national energy plan passed the Republican-controlled House. However, the bill was strongly opposed by some of the Democrat senators and extensive lobbying of both pro and anti oil and gas drilling parties took place in Washington throughout 2001 and the beginning of 2002. On 18 April 2002, the Senate voted to keep the Arctic National Wildlife Refuge free from oil drilling.

Sources

State-Tribal Relations Working Group.
Letter to Secretary of the Interior from Alaska State Legislature Senate.
President and Speaker of the House.
Alaska Federation of Natives.
Rural Alaska Community Action Program.
Office of the Governor, State of Alaska.

NUNAVUT

The territory of Nunavut covers the Eastern Arctic region of Canada and was created under the land claim agreement between the

Inuit of the territory and Canada. It came into existence in April 1999 (see also *The Indigenous World 1999-2000* and *2000-2001*). The Government of Nunavut is a public government, representing all people living in Nunavut. The rights and responsibility accorded to Inuit under the 1993 Nunavut Land Claims Agreement are managed by an Inuit representative organisation called Nunavut Tunngavik Incorporated (NTI). NTI's leadership is elected by Inuit, whereas all residents of Nunavut (Inuit and non-Inuit) vote for members of Nunavut's Legislative Assembly.

The government of Nunavut

2001 was a year of consolidation for the new Government of Nunavut. Its ten departments continued to hire staff, establish decentralized offices in ten communities outside Iqaluit (the capital), deliver a wide range of programs and services and review its legislation and policies in order to determine where change was most immediately required (the development of a "made in Nunavut" Wildlife Act being one example). Few of these efforts generated news headlines – at least not outside Nunavut. For example, the Nunavut Power Corporation came into being and assumed responsibility for the generation of electricity in Nunavut communities. This is not the sort of story that fires the imagination of newspaper editors but it is precisely the kind of institutional development that self-government entails.

Issues that dominated public discussion included the quality of the territory's education and health programs, efforts to incorporate Inuit Qaujimajatuqangit (Inuit traditional knowledge) in the operation of government (see also *The Indigenous World 2000-2001*), limited progress in raising the percentage of Inuit employees working for the government, the change from three time zones to a single Nunavut-wide time zone (which was eventually abandoned) and the start-up of a law school for 15 Inuit students. Language Commissioner Eva Arreak called for a new language law that would require all business and road signs, utility bills and medicine prescriptions to be written in Inuktitut in addition to any other languages.

Premier Paul Okalik and his Cabinet emerged from a mid-term leadership review in October 2001 largely unscathed, and it would appear that the current leadership will remain in place until Nunavut's second election – expected to take place in November 2003.

The Inuit organizations

2001 was rather more unsettled for several of the representative Inuit organizations.

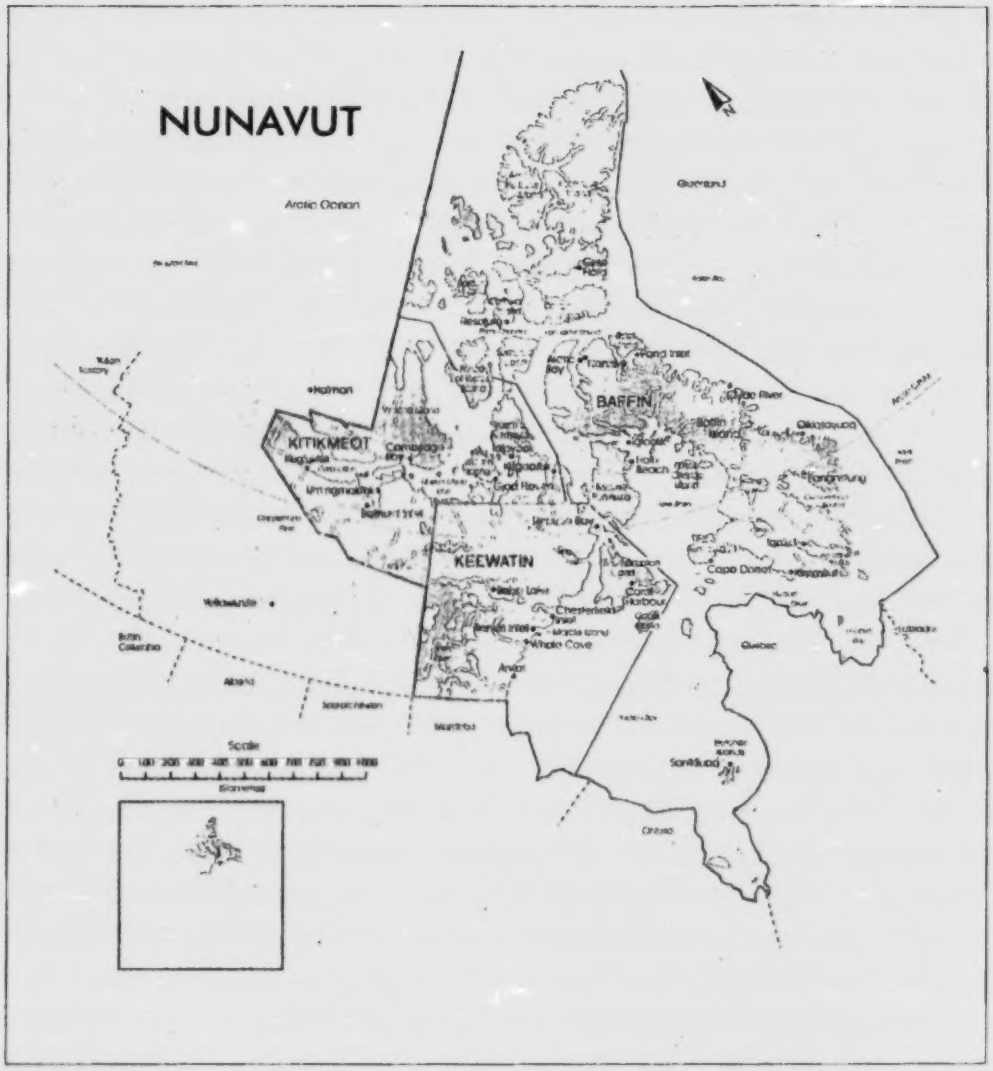
Paul Quassa resigned as President of NTI after he was discovered to have abused corporate credit cards and bank cards. Cathy Towtongie of Rankin Inlet was elected by the Inuit of Nunavut to replace Quassa, thereby becoming the first woman to head NTI. In an election in which just 45 per cent of eligible voters bothered to cast their ballot, she narrowly defeated long-time Inuit politician John Amagoalik, who is often referred to as "the father of Nunavut".

While NTI was welcoming its first female President, the Board of Directors of the Qikitani Inuit Association (QIA), which represents the interests of the Inuit of the Baffin region, fired the first woman to become President of QIA. Meeka Kilabuk's erratic behavior had raised questions about her ability to lead the struggling organization but she had not done anything illegal or immoral. The fact that the all-male Board of Directors removed her from office when the sins of so many male politicians had been forgiven over the years led observers to speculate that her real crime was that she was not part of the regional "boys' club".

Economic development

The economic news in Nunavut was often depressing: The Supreme Court of Canada rejected NTI's appeal against a lower court decision that upheld the federal government's allocation of quotas for turbot in Baffin Bay and Davis Strait. Nunavut interests receive just 27 per cent of the total allowable catch in the waters adjacent to Nunavut. It is a principle of fisheries management in Canada that a significant proportion of the quotas for any given species are allocated to companies based in the province or territory closest to where the species resides. NTI felt that the federal government's decision to give the bulk of the quotas to interests in Atlantic Canada violated the land claim's requirement that NTI be consulted on allocations of this kind but the courts ruled that the consultation had been adequate.

First Air terminated its weekly jet service between Iqaluit and Kangerlussuaq (Greenland), leaving Nunavut without a scheduled airline service to its neighbour in the east. Not only will this limit the opportunity for business development between Nunavut and Greenland but even the most basic exchanges between the two govern-



ments will be made that much more difficult (and expensive) as a result.

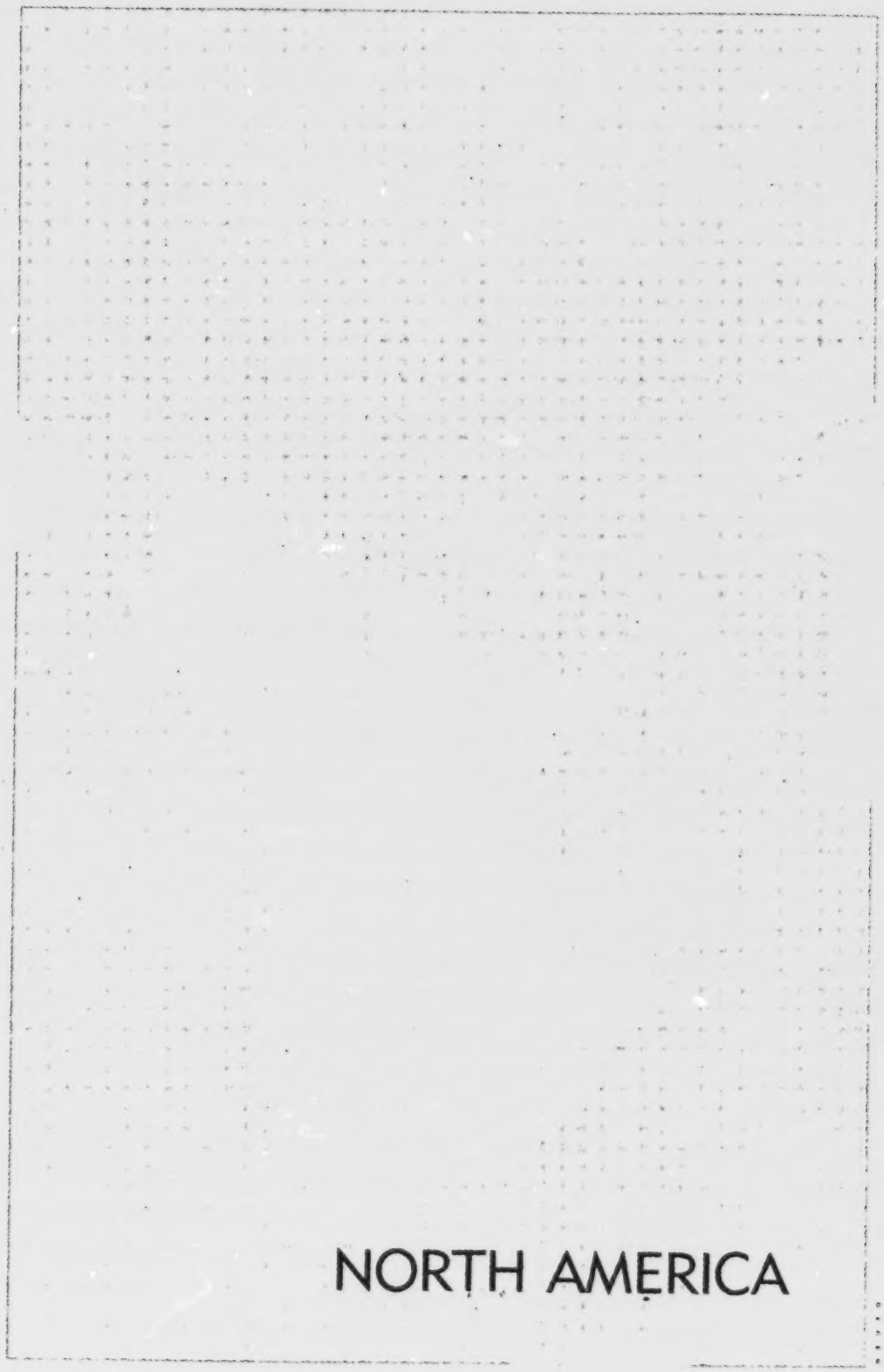
Breakwater Resources announced that its Nanisivik lead/zinc mine, which has operated near Arctic Bay on northern Baffin Island since 1974, would close in September 2002 - several years earlier than forecast. Unemployment remains a huge problem in Nunavut, and with a large number of teenagers about to enter the labour force the situation can only become more serious. Other parts of Canada often required significant public investment in infrastructure to encourage the development of a viable private sector. The Government of Nunavut and the representative organisations are lobbying the federal government to invest in the future of Nunavut as it invested in the rest of the country in earlier times.

BEST COPY AVAILABLE

That being said, there continues to be a high level of exploration for gold and diamonds as well as for base metals taking place in the Kitikmeot and Keewatin regions. Several promising properties may well be brought into production in the next few years.

Inuit film makes international news

Perhaps the brightest moment in Nunavut in 2001 came when "Atanarjuat" ("The Fast Runner"), the first feature film made by Inuit, was released – and quickly took the cinematic world by storm. A photograph of director Zach Kunuk of Igloolik accepting the coveted *Camera d'Or* prize at the Cannes film festival appeared on the front page of nearly every major newspaper in Canada. The film was rapturously received in Nunavut communities, and is now being distributed both nationally and internationally. "Atanarjuat" has immersed and engaged Canada and the world in Inuit culture in ways that only a truly great film can. "Atanarjuat" is a source of great pride for Nunavummiut, who are already looking forward to Zach Kunuk's next film – which will focus on the relationship between Inuit and the first non-Inuit residents of Nunavut, the priests, the traders and the police.



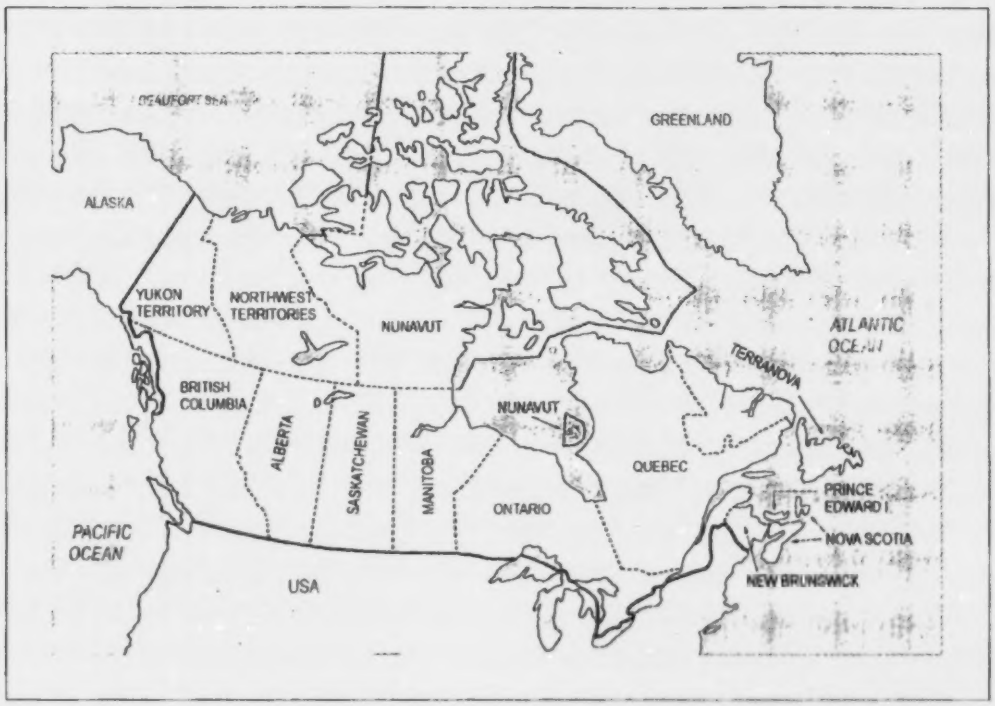
BEST COPY AVAILABLE

The First Nations Governance Initiative

The second article on Canada, in *The Indigenous World 2000-2001*, was devoted to the *First Nations Governance Act* and the *First Nations Financial Institutions Act*. In that article, Russell Diabo summarized these proposed amendments to the federal Canadian law regarding the legal status of "Indian" Communities, which were proposed by Robert Nault, the Minister of Indian Affairs and Northern Development. Nault has since announced that even more companion bills might be introduced in 2002. The package of amendments and new bills has been labeled the *First Nations Governance Initiative* (*FNGI*).

Two essential factors remain the same in 2002 as described in last year's book:

1) Adoption of this package would re-write the status of First Nations and additionally change the relationship of Chiefs-and-Councils to their communities. At the same time, it would limit the liability of the federal government (the Crown in right of Canada) for repeated and continuing breaches of its fiduciary duties as they have been set out in historic legislation and in court decisions from the 1985 *Guérin* decision (in which the Supreme Court of Canada found that the Crown has a legally binding fiduciary or trust-like duty to act in the best interests of First Nations) to the 2001 *Cree School Board* case (in which the Québec Court of Appeal criticized the federal and Quebec governments for once again ignoring the terms of the *James Bay and Northern Quebec Agreement* which, among other things, guarantees that the Cree School Board should be a party to any decisions affecting Cree education).
2) First Nations political organizations across Canada have expressed their steadfast opposition to *FNGI*, identifying it as a programme that renews colonialism and ignores the key recommendations of all the public inquiries into First Nations relations in Canada, particularly the 1983 *Penner Report* and the 1996 *Report of the Royal Commission on Aboriginal Peoples* and a 2000 Senate Report entitled *Forging New Relationships*. Each of these earlier reports had set out basically complementary plans for realizing a provincial-type of self-government for First Nations within the Canadian Confederation. The new



programme, however, will require First Nations to govern themselves via a complex system of direct democracy that no territorial or provincial government in Canada would find workable. "Communities First", as this government statement is called, argues that the minister wants to focus on the well-being of the communities and not to focus so much effort on the legal rights that First Nations leaders emphasize. This is a doubly offensive argument. Without jurisdiction or legal authority having been granted by Parliament, the minister could do nothing. He would not have an office. In contrast, since the rise of colonial authoritarianism, but particularly since the 1969 *White Paper* in which the Trudeau Government and the then Minister of Indian Affairs, Jean Chrétien, proposed terminating all Indian rights and imposing a policy of assimilation, First Nations leaders have been arguing that the living standards of their communities will only improve when they achieve substantial freedom from Canadian colonial rule. They point to numerous parliamentary and public inquiries, such as those just mentioned, that have reached similar conclusions. Proposals to hand "Indian affairs" over to the provinces have been criticized by parliamentary committees ever since the *Watson Report* on Indian Education, in 1971, found that the best progress was to be found in

BEST COPY AVAILABLE

transferring Indian schools to Indian control. Yet, in 2002, public and Catholic school boards receive 50% more money per Indian student than do First Nations-run schools.

Nault's strategy and plan is not new. Indian Affairs officials have been providing variations on this package for the presentation of one minister after another since 1978 when they talked of *Optional Indian Band Government Legislation* which, like *FNGI* was a proposal of Indian Affairs officials to revise federal Indian law without consulting with First Nations leaders. A close examination of each of the proposals that has reached the light of day — something that Indian Affairs officials avoid as though they were still a part of the defence establishment[1] – shows that the ministerial verbiage and propaganda proclaims promises of increased autonomy and greater community control while a closer look at the actual proposals indicate a legal text moving in quite the opposite direction.

Two things have changed under Robert Nault's rough-hewn ministrations. First, Nault has made it clear that he is quite prepared to circumvent the elected First Nations leadership – including community leaders, tribal and grand councils, provincial and territorial political organizations and the national organization of status Indians, the Assembly of First Nations. Secondly, the set of political strategies and rhetorical sleights-of-hand developed by the Indian Affairs bureaucracy, in collaboration with the Privy Council Office (PCO), [2] re-work the plain sense of many key words in English political discourse in the interests of fostering an illusion of change in the face of a renewed colonialism.[3] Even the word "governance" has been introduced as part of an effort to evade earlier proposals for genuine *First Nations self-government*. The Canadian public and their parliamentary representatives may have been fooled by this Alice-in-Ottawa rhetoric in which words take on meanings that are upside down from their usual meanings. First Nations leaders across the country have clearly identified Nault's programme as an attack on the autonomy of their communities that undermines their efforts at rebuilding their nations in the face of historic Canadian colonialism.

The issue of consultations

Robert Nault has distinguished himself from his recent predecessors by a willingness to be far more confrontational in his relations with First Nations leaders. This confrontational attitude has come to be

seen as a large part of what *FNGI* is really all about. The earliest efforts to re-write the *Indian Act* were developed without any efforts at consultation with the First Nations leadership. It was an effort undertaken entirely within the Indian Affairs bureaucracy undisturbed by the presence of any representative Indians.

Since John Munro became Minister in 1980, Canadian Ministers of Indian Affairs have needed to create the appearance of consultation with First Nations leaders – indeed, if rights are involved, the courts require it. The list of ministers from Munro to Nault could well be sorted into those who gave evidence of actually listening to First Nations leaders and those whose consultations were an empty shell. By and large, those ministers whose record gives evidence of listening to First Nations leaders also evidence a significant effort to direct rather than be directed by their senior officials. Almost all the ministers with a demonstrated ability to listen to First Nations were replaced soon after their sympathies became apparent.

Nault's confrontational manner has determined on which of these lists his name will appear. The earliest indication that he was expecting and willing to foster resistance from First Nations leaders was his decision to make his initial announcement of *FNGI* before an audience of high school students instead of announcing his intentions to First Nations leaders and to parliament, which was a calculated insult. Then and ever since, Nault has maintained a mantra about the evils of the present *Indian Act*. This might be called "Nault's *straw Indian*", i.e., his reply to an argument that was not made. Since the hearings of a task force headed by the then junior Minister of Indian Affairs, Robert Andras, before the 1969 *White Paper*, First Nations leaders have consistently argued that the federal *Indian Act* should be re-written to recognize and respect the Aboriginal and treaty rights of First Nations. [4]

Nault's attack on the *Indian Act* plays on the illusion that this act is the principal embodiment of federal authority in First Nations relations. Yet, the largest part of his departmental activities – housing, education, land claims, even policing — take their authority from annual appropriations acts. Indian health services, though administered by another department, are likewise authorized by an annual appropriation act. The most basic reform that any Canadian government could make would be assured, long-term funding for First Nations community-based programs.

In July 2001, on a national Canadian Broadcasting Corporation (C.B.C.) radio program, *The House*, Nault was emphatic that if he could not find First Nations leaders with whom to consult he would find other Indians who were prepared to consult with him. Listening to

this interview again recently, I heard the sound of a colonial governor determined to install a pliable local administration. The rhetoric resonated with images of a 19th century outpost of the British Empire.

Nault also claimed, based on some co-operation from one provincial First Nations political organization, to have gained participation in his consultation programme. Non-governmental observers, however, see some First Nations, such as the Prince Albert Grand Council in northern Saskatchewan, who have accepted consultation funding in order to develop their opposition to *FNGI* while others have simply refused to participate.

Consultations have not, however, been primarily between the minister and First Nations leaders. The minister has sent a flying squad of officials around the country to conduct workshops according to an agenda fixed in Ottawa. These workshops were devoted to discussing those issues of Indian law reform that the departmental officials chose to put on the agenda. There has been a consistent refusal to include items on the agenda that were sought by First Nations representatives. Although the department has adopted the slogan "Communities First" there is no apparent reason to expect that the communities and their elected leaders have a voice in setting the agenda. At several of these workshops bureaucrats outnumbered First Nations folks.

The Case of the Dakota Tipi First Nation

Nault's confrontational attitude has carried over into related areas. On March 27, 2002, for example, Nault overthrew the traditional government of the Dakota Tipi First Nation and placed it under "third party management until such time as an election for a Chief and Council has occurred". The Dakota Tipi First Nation has followed a traditional form of governance, as allowed under the *Indian Act* since its inception, since time immemorial. Dakota Tipi has now applied to the Federal Court to overturn the Nault overthrow on the basis that he acted in bad faith, failed to observe principles of natural justice and erred in law. When the minister suspends the authority of a traditional council and declares that a third party manager, i.e. a person appointed by the minister who is neither a career civil servant nor an elected council, has sole authority then (a) no resources go to the community, including any social programs or money for consultants, advisors or suppliers and (b) any effort to gain access to the offices by the traditional council can be met by the armed force of the police at the request of the third party manager. What this means is that the Minister and his senior officials had determined to be rid of a tradi-

tional form of governance whether or not they had to stoop to violence to effect it. [5]

First Nations find that the introduction of third party managers – usually done on the grounds of financial mismanagement – is a disaster from which recovery often takes several years. In the Dakota Tipi instance, the evidence points to the use of this ministerial authority primarily for political objectives, since financial management has not been at issue. Another example is Pikangikum, in North-western Ontario near the Manitoba border, where a tragic wave of suicides prompted the Minister to impose third-party management although most observers felt the return of the Indian Agent, i.e. a person who acts on the Minister's behalf and "administers the Indians", would add to the factors of colonialism, poverty and hopelessness that fostered the suicides in the first place.

Conclusion

The rhetoric of "Communities First" and "First Nations Governance" – derived from an Orweilian newspeak that runs throughout the history of Indian Affairs – has risen to new levels of obfuscation: "Governance", upon close examination, proves to be a code word for renewed federal authority. A hypothetical concerned citizen might well mistake it for "self-government" as recommended by successive committees of both Houses of Parliament and the Royal Commission on Aboriginal Peoples.

Likewise "accountability" turns out to be about more detailed *reporting to federal authorities* by band administrations, in contrast to the impression that it is related to *responsibility of First Nations leadership to their own communities.*

Ministerial rhetoric about improving community living conditions *rather than developing self-government* runs against Nault's own argument that all problems will be solved if the federal Government could only create the perfect institutions of Aboriginal governance. Worse, it ignores the history of appalling rates of child mortality that have resulted from non-fulfillment of federal treaty obligations even under modern land claims agreements such as the *James Bay Agreement.*

What I have called "rhetoric" is not merely a matter of word games. If it is a game, it is one that is deadly serious. Nault's rhetoric represents a sea change, a sudden and dramatic shift in which the Liberal government is playing primarily to the Official Opposition in the Canadian Parliament, a party long dedicated to assimilation, a code

word for the dissolution (if necessary, the destruction) of the First Nations. Throughout this Parliament and the previous one, the right-wing party, the Canadian Alliance, and its predecessor, the Reform Party, have told Prime Minister Jean Chrétien that his great mistake in Indian policy was his abandonment of the 1969 *White Paper* policy of forced assimilation and termination of Aboriginal and treaty rights. Indians, the Alliance argues, need to be dragged into the mainstream.

Alliance MPs who urge the Liberal government toward assimilation are aware of the growing line of cases in which the Supreme Court of Canada and the Courts of Appeal have declared that the guarantee of Aboriginal and treaty rights in Part II of the *Constitution Act, 1982* is a solemn promise and that the obligations of the Canadian Crown to First Nations are legally enforceable fiduciary duties on which depends the "honour of the Crown". They may even be aware of the Court's injunction against what the Supreme Court described as "sharp dealings" in First Nations relations. Their reply to this line of reasoning is that it smacks of judicial activism. These are matters for Parliament to resolve, for instance, through the *First Nations Governance Initiative.*

Notes

1 Indian Affairs was run by the defence department for many years, indeed, from Confederation until after WWI. After WWII it was dominated by retired military officers who continued to recognize one another by their ranks.

2 PCO is the federal department directly under the Prime Minister that has responsibility for constitutional development including "Aboriginal Constitutional Affairs", a term formerly used to describe a branch of PCO. As its name suggests, this most central of central agencies operates under a cloak of secrecy. The present Deputy Minister of Indian Affairs is only the most senior of several officials to come to Indian Affairs from PCO. PCO is the most likely path of promotion for Indian Affairs officials concerned with issues of governance.

3 The government consistently used terms in the discussion of First Nations relations which consist of words used in other political discourse but they then define them in ways that are quite unfamiliar. As a result, the ordinary citizen with a casual interest in Indian policy is led, for instance, to believe that the government is looking to enable self-government, or to do other good things when, in fact, they are doing quite the opposite.

4 It is quite central to my thesis here and elsewhere that First Nations leaders have been unfailingly consistent in the positions that they have

taken before various kinds of public hearings at least since 1967. I use this benchmark because the Andras hearings were supposed to gather the evidence on which the White Paper was supposed to be based. Quite clearly, the White Paper was, in fact, written in the Privy Council Office without regard to the evidence gathered by Minister Andras.

5 Application for writ of *certiorari* of Dakota Tipi First Nation in the Federal Court of Appeal, April 5, 2002.

NORTHWEST TERRITORIES

As was the case last year (see *The Indigenous World 2000-2001*), non-renewable resource development dominated the political agenda of the Northwest Territories' Aboriginal peoples in 2001. Over the past twelve months, economic activities in the NWT grew substantially, both in terms of gross domestic product and employment, largely as a result of mineral, oil and gas prospecting and development. Additional impetus to this growth came from widespread preparations by governments and industry in anticipation of the construction of a major natural gas pipeline down the Mackenzie Valley. This pipeline as currently planned will run through the NWT from north to south passing most regions that are under indigenous land-claim or self-government negotiation. In the face of all this activity, the prime focus of Aboriginal governments, communities and corporations alike was on ensuring appropriate recognition and protection of their interests. Unfortunately, with all the emphasis on resource development, little progress occurred in the NWT in terms of implementing the inherent right of Aboriginal self-government.

The development of pipeline proposals

A key challenge for NWT Aboriginal governments has been to determine which of three competing pipeline proposals best serves their long-term economic and social interests. Two of them are backed by consortia of large multinational corporations: one, the Alaska Gas Producers, proposes to construct a pipeline from Prudhoe Bay in northern Alaska down through the Yukon territories in northern

Canada to southern Canada, while the other, the Mackenzie Delta Producers Group plans a pipeline route from onshore natural gas fields in the northern NWT down the Mackenzie Valley. A third proposal has come from the Arctic Resources Corporation (Arctic Gas), which is prepared to consider 100 % Aboriginal ownership and debt financing for a pipeline, also down from the Beaufort Sea. Each of these projects extensively lobbied Aboriginal and non-Aboriginal governments for their support and, by the year's end, the Mackenzie Delta Producers Group appeared to have become a clear front runner. In late spring 2001, the Delta Producers Group and the Aboriginal Pipeline Group, a government/industry-funded body representing the NWT's regional Aboriginal organizations, reached a tentative agreement on a *Memorandum of Understanding (MOU)* on Aboriginal equity participation in a gas pipeline project. The Pipeline Group first tabled the *MOU* before the Aboriginal leadership at a June meeting in Hay River. In return for up to one-third ownership of a potential pipeline, it commits Inuit, Dene and Metis governments to supporting the construction of a Mackenzie Valley pipeline, and to recognizing federal jurisdiction over pipeline monitoring and regulation. This *MOU* became the subject of intense debate among the leadership, a debate that continued throughout the summer and fall in all the regions up and down the Mackenzie Valley. In taking a stand either for or against the *MOU*, each Aboriginal community was forced to clarify its views about the future of economic development in its region and about how a pipeline would fit within this.

Some of the strongest opposition to this *MOU* came from Dene First Nations in the Deh Cho region, which are collectively negotiating an agreement with Canada that more fully implements the original terms of Treaty 11 between the Deh Cho and the Crown. A Special Deh Cho Assembly in August unanimously agreed that the region's support for a pipeline project was conditional upon: 1) an agreement being reached with Canada on resource revenue sharing and land access fees; 2) an environmental review of the project involving the Deh Cho as a full and equal participant; and 3) the negotiation of impact/benefit agreements for Deh Cho communities. So far, none of these conditions have been met, and the Deh Cho has still not formally endorsed the project proposal. Several land claim organizations in the Sahtu region also rejected the *MOU* as it stands, and have thrown their support behind the alternative pipeline proposed by the Arctic Resources Corporation (Arctic Gas). Nevertheless, the project's proponents pressed ahead and, in January 2002, the Delta Producers Group and the Mackenzie Valley Aboriginal Pipeline Corporation

jointly announced their intention to work together in developing an application for regulatory approval.

Although Aboriginal governments may achieve some equity ownership in an eventual Mackenzie Valley pipeline, they will apparently play only a limited part in its impact review, formal approval and regulation. Judging from the content of the draft *Cooperation Plan* (December 2001) on project approval, these responsibilities will remain largely with the federal government and with co-management bodies. This *Plan* was worked out over the course of the year by a number of impact assessment and regulatory authorities, with the NWT Aboriginal governments being restricted to a consultative role. This exclusion clearly revealed how far the Aboriginal governments still have to go to achieve practical recognition of their inherent right of self-government over their traditional lands and resources.

Self-government discussions

Self-government negotiations between Aboriginal regional organizations and the federal Crown made only modest progress over the past year. In October 2001, an *Agreement in Principle* on Gwich'in and Inuvialuit self-government was initiated by Aboriginal and government negotiators, and work has now begun toward a Final Agreement, which is still several years away. The final stages of the Dogribs' self-government/land claim talks with Canada continue to drag on, as disagreements over key issues such as "certainty", overlap with other First Nations' territories and taxation powers stand in the way of an Agreement. During the summer, Deh Cho and federal/territorial negotiators finalized an *Interim Agreement* as well as a *Framework Agreement* as a basis for further negotiations. Some of this *Interim Agreement's* provisions have no precedent in Canadian treaty talks, as they recognize the Deh Cho region's veto powers over several federal and territorial government authorizations. However, subsequent negotiations have come to a near standstill over Canada's unwillingness to share resource royalties with Deh Cho Aboriginal governments.

THE UNITED STATES

Following the September 11 attack on New York and the Pentagon, many Native peoples in the United States participated in efforts to aid the victims. For example, Native communities organized spiritual events to ease the passage of the dead as well as to help strengthen the survivors. In addition, keepers of spiritually important pipes traveled to "ground zero" in order to support the efforts of Mohawk ironworkers working at the site. While at this place of sorrow, these Native peoples not only burned sage to cleanse themselves but also purified any non-Native individuals who asked.

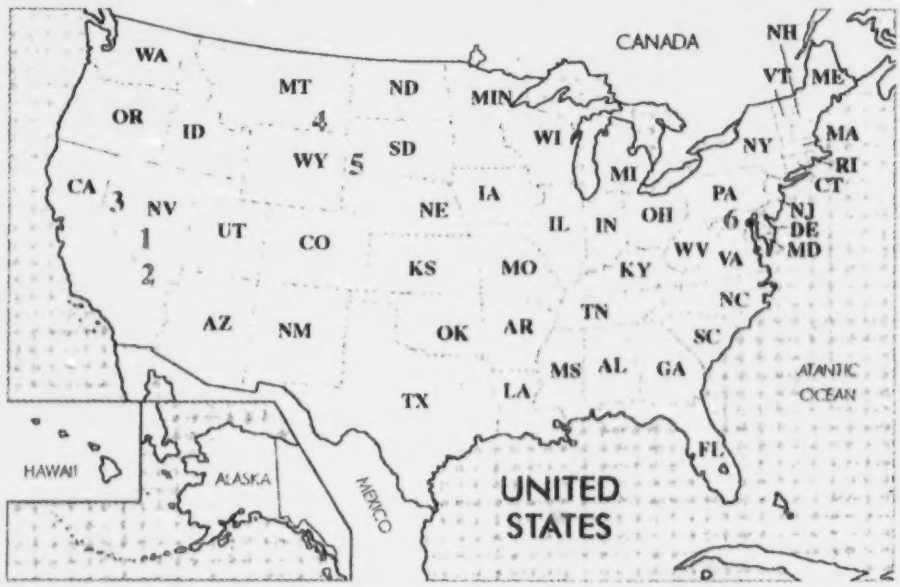
Although the tragedy of September 11 has overshadowed domestic issues, many areas concerning Native communities in the United States still deserve the attention of federal and state authorities. Issues concerning sovereignty, health and finances dominate political discourse among Native Americans. As a consequence, controversies surrounding the Individual Indian Money Trust Fund, sacred sites, gaming, health, education, and jurisdiction over tribal lands, budgets and taxation have begun to gain national attention. Predictably, each of these areas continues to plague Native efforts to sustain viable communities.

Currently, the Bush administration has yet to make any of these issues a priority. This lack of activism on the part of the federal government appears to be related to budgetary constraints, a philosophy that promotes state rights, and a commitment to the development of extractable resources.

A number of Native advocacy organizations have been critical in the fight to protect the rights of indigenous groups affected by the government's failure to address Native concerns in policy decisions. Particularly helpful in this regard are the Native American Rights Fund (NARF) and the National Congress of American Indians. In order to illustrate the uphill battle facing Native populations in the United States, three specific areas will be addressed. These include the Individual Indian Money Trust Fund, sacred sites, and issues concerning health and education.

Individual Indian Money Trust Fund

Five years ago, three hundred thousand Native people filed a class action lawsuit against the Interior Department's misuse of trust fund



1. Yucca Mountain
2. Death Valley
3. Pyramid Lake
4. Weatherman Draw
5. Black Hills
6. Washington, D.C.

accounts. Referred to as *Cobell v. Babbitt*, who was Clinton's Secretary of the Interior, the case alleges that the Bureau of Indian Affairs, a sub agency of the Department of the Interior, underpaid or in some cases failed to pay fees owed to Native tribes and individuals for the use of their land. This problem most commonly occurred over the royalties owed for the extraction of resources such as timber, mining, grazing, oil and coal. At this point in time, these federal agencies cannot account for billions of dollars kept in thousands of trust fund accounts set up for Native peoples. This problem has had the most effect on Natives who reside in the Great Plains states. At least forty percent of the individual accounts managed by the Bureau of Indian Affairs belong to individuals living in North Dakota, South Dakota and Nebraska.

This endemic weakness in accounting procedures began in 1887, when federal law divided some reservation land into smaller plots for individual Natives. Currently, the Bureau of Indian affairs, oversees 45 million acres. Because the land is held in trust, it cannot be taxed or sold and the government must approve any leases.

After President Bush's election, the *Cobell v. the Department of the Interior* case focused on the actions of the newly appointed Interior Secretary, Gale Norton, and Neal McCaleb, the recently appointed director

BEST COPY AVAILABLE

of the Bureau of Indian Affairs. In late December, the District Judge overseeing the trial filed contempt charges against both of the government officials over the potentially fraudulent loss of these trust monies. According to the District Judge, Norton and McCaleb failed to aid the trust holders' efforts to gain information concerning funds missing from their accounts.

When the court resumed after its recess during January 2002, the Interior Secretary discussed her efforts to determine how much Natives are owed because of prior mismanagement of the fund, which began more than 100 years ago. Norton's main defense centers on the faulty accounting practices of the past, a loss of critical documents due to improper storage and the destruction of other critical information by past administrators.

Both McCaleb and Norton are spearheading efforts to remove the Bureau of Indian Affair's historical control over trust accounts. In its stead, they envision the development of a Bureau of Indian Trust Assets Management. Consequently, Norton requested that $300 million earmarked for the Bureau of Indian Affairs be transferred to the Department of the Interior. Apparently, she visualizes using this money for trust fund management. However, only $83 million of this funding will be used to oversee trust reform. Almost every Native leader opposes this proposal. As one leader noted, this change fails to address the decades-old problem of the government's mismanagement of billions of dollars belonging to Native landowners.

As an alternative, tribal leaders suggest centralizing trust funds - both tribal and individual - while allowing the Bureau of Indian Affairs to continue managing the funds. Currently, the management of trust funds is spread between a number of Interior and Bureau of Indian Affairs departments. According to the Santee Sioux Tribal Chairman, Roger Trudell, "the bottom line would be to get the bureau out of the Interior Department. Right now, fish get more money than an Indian person gets".

If the class action suit perseveres and a total loss of income owed the Native peoples is determined, the federal government will be responsible for returning monies belonging to the individuals involved in the class action suit. As yet, the contempt charges facing Norton and McCaleb have not been resolved.

Sacred Sites

Protecting land considered sacred to Native peoples has been a contentious issue in the United States. A particularly problematic situa-

tion occurs when the private or public sector rather than Native peoples control culturally important land. Yucca Mountain provides an example of this difficulty.

In January 2002, the Department of Energy chose Yucca Mountain as a repository for the bulk of the nation's nuclear waste. Currently, about 40,000 tons of commercial waste is generated yearly. Estimates suggest that this amount will increase by at least 2,000 tons annually. In order to address this problem, the Energy Department wants to deposit a minimum of 77,000 tons of highly radioactive material at Yucca Mountain.

Located in Nevada, Yucca Mountain is considered a place with immense spiritual power by the Shoshone and Paiute peoples. According to their beliefs, even the water emerging from the mountain contains spiritual energy. Although the mountain has been used by the military for nuclear testing, the land is actually protected by an 1863 treaty signed by the United States Government and the Shoshone. Unfortunately, the Shoshone have not been able to control their rights to the land. Because of the misuse of this area, the Western Shoshone Nation suffer from widespread cancer, leukemia and other disease as a result of the fallout from more than 900 atomic explosions on their territory.

During President Clinton's tenure in office, he vetoed the use of Yucca Mountain as a nuclear repository. With a new administration, this policy has changed. President Bush approved the site's use as a storage area for radioactive waste in February 2002. If the Senate and the House approve the plan, Yucca Mountain will become the nation's number one nuclear repository. Currently, the Native peoples affected, Nevada officials and environmentalists are fighting Yucca Mountain's designation. Politically, however, it appears that this coalition will lose their battle.

Adding insult to injury, Senate Bill 958 - the Western Shoshone Claims Distribution Act offers $117 million to individual Western Shoshone citizens for 26 million acres of land that is not, and has never been, for sale. With the passage of this bill, any future claims made by the Western Shoshone will not be considered. Presently, the bill is still in committee. It is impossible to predict whether or not the Senate will pass the bill once it moves to the floor for a vote. Sponsors of the bill hope that its passage will diminish the loss of Yucca Mountain by providing monies for the land and long-term health costs incurred by the Western Shoshone from the past misuses of their territory.

Weatherman Draw, which encompasses 47,000 acres and is located approximately 70 miles southwest of Billings, Montana is another sacred area in peril. At least ten Native nations perceive this region to be sacred. Numerous rock drawings dating back several

thousand years, dot the entire landscape. Unfortunately, Philip Anschutz, the 16th wealthiest person in the world, has a lease to drill for oil in the area. He bought the lease in 1994, which predates the Bureau of Land Management's regulations concerning the protection of places important to our nation's heritage. During Clinton's presidential term, the issue was buried in red tape. After Bush took office, he granted Anschutz's firm the right to begin drilling in the region this June.

As a strategy to protect the region, the Blackfeet have offered Anschutz the right to drill for oil on their reservation instead of on the sacred site. Based on geological surveys, the region offered by this Nation is known to contain at least two billion barrels of oil. To date, Anschutz has refused to consider the Blackfeet's offer.

On a more optimistic note, the Lenape of New Jersey have managed to save a 10,000-year-old site from plans by the town council of Vernon, New Jersey to build a baseball field on the sacred area. In this case, the National Congress of American Indians passed a resolution protecting the site from development.

Another positive development involves the Pyramid Lake Paiute Tribe's agreement with the Department of the Interior and local cities in Nevada. $36 million will be used to clean up the Truckee River, a major source of water for Pyramid Lake. As a consequence, the endangered cui-ui fish, which is only found at Pyramid Lake and considered critical to the local Paiute, will have a chance to recover (see also *The Indigenous World 2000-2001*).

Health Issues

During the year, the Indian Health Service, under the auspices of the Department of Health and Human Services, received $2.6 billion to provide healthcare to 2.4 million American Indians and Alaska Natives. Populations residing on reservations or in rural communities received most of these monies.

Currently, 60% of Native peoples in the United States rely on the Indian Health Service for their medical needs. And yet the health of Native peoples is still poorer than that of any other ethnic population in the United States. Obvious health disparities exist in terms of life expectancy, infant deaths, diabetes, tuberculosis and alcoholism. Life expectancy is five years less than for any other populations in the United States. Infant mortality is 8.9 per 1,000 live births, as compared to 7.2 for the population at large. In other areas, these disparities become much worse. In relation to the population at large, death rates

due to alcoholism (740%), tuberculosis (500%), diabetes (390%) and suicide (190%), are clearly much higher for Native peoples.

According to the Indian Health Service, they only receive 59% of the monies needed to address the health care needs of Native peoples. Hopefully, next year's budget will take these health disparities into account.

Development

Reservations are desperately trying to develop employment opportunities for their citizens. In some states, gambling has provided a boom to local economies. Many states do not allow this type of activity, however. In those states that do allow gambling, the market is becoming saturated with competing gaming operations. In the past, proceeds from gaming could not be taxed by the state in which they operated. A number of states have successfully fought to tax these proceeds during the past year. This has reduced profits made from gambling further.

In Nebraska, the Santee community has continued to battle against the state for the right to legally operate a gaming operation. For the first time since this issue arose, the state's committee addressing the activity had enough votes to send a bill to the floor. Once there, it is hoped that the bill will receive enough support from fellow state legislatures to undertake a statewide ballot on the rights of Native gaming. If passed, casino gambling would be allowed on reservation lands or trust lands owned by the Omahas, Winnebagos, Poncas and Santees. According to some elected officials, however, not enough votes are available in the state legislature to place the issue on November's ballot.

During the past year, the Lakota attempted to develop the commercial production of hemp. The importation of hemp is allowed through NAFTA and currently Canada is one of the main exporters of this crop into the United States. Unfortunately, the United States failed to grant the Lakota the right to produce hemp for sale.

Unfortunately, state and federal laws continue to hinder the commercial development of tribal lands. Few options beyond gambling, the selling of extractive resources and the leasing of land for grazing or farming are presently available to Native peoples. Few Native nations have managed to make enough money in any of these areas to diversify their economies. Hopefully, 2002 will be a more prosperous one for the indigenous peoples of the United States.

Education

Native American students face obstacles in their educational success. Only 9% of Native Americans have bachelor's degrees, as compared to 22% for whites and 20% for all other ethnic groups. The Bureau of Indian Affairs' school programs, which serve 50,000 students, will receive $504 million in 2002. Although the General Services Administration estimates $292 million dollars are needed to repair, improve and construct schools under the management of the Bureau of Indian Affairs, only $13.1 million dollars were earmarked for these needs.

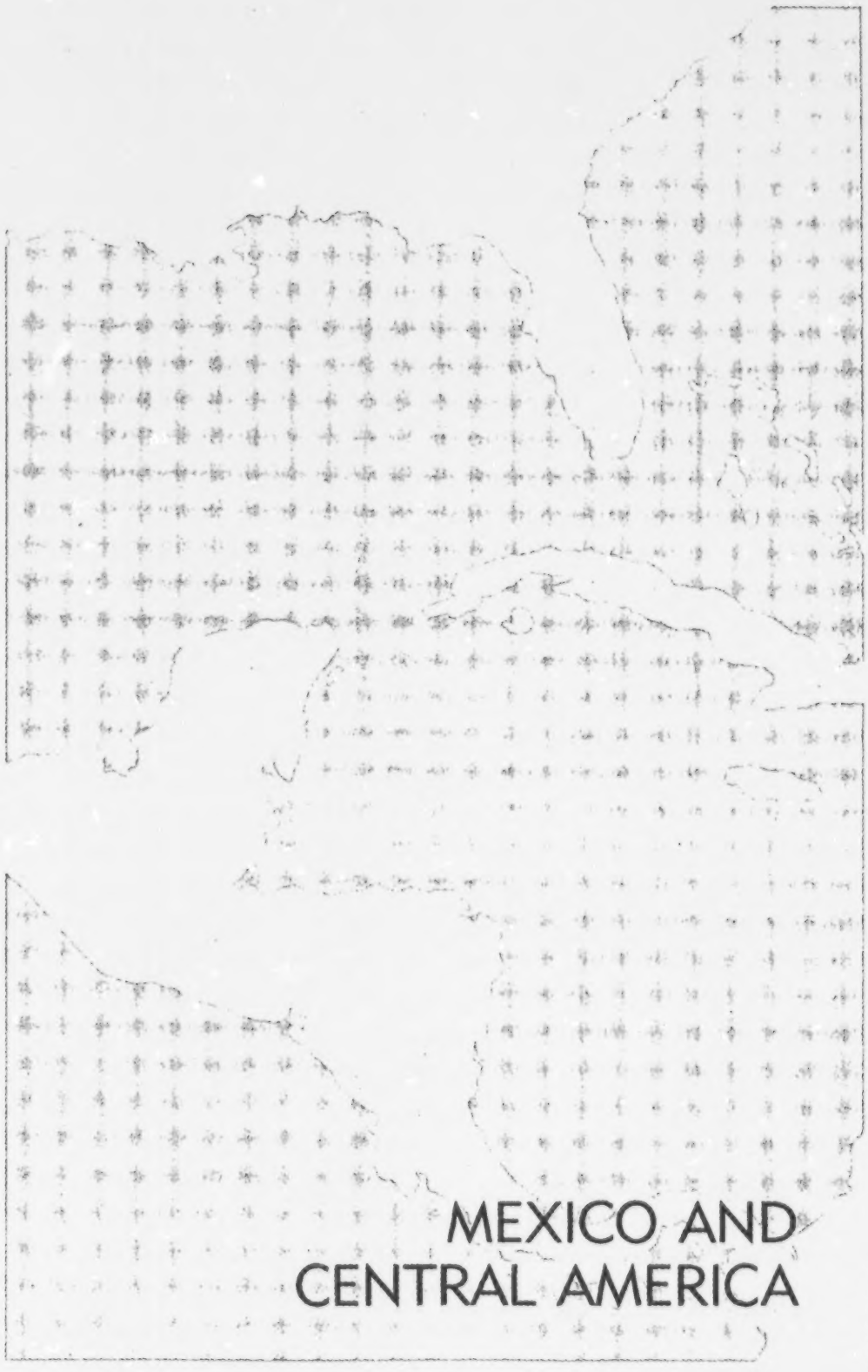
Native schools that administer their own education programs have also received less money than requested. During the 2002 fiscal year, these schools will only receive 80% of the funding needed to fulfill their administrative responsibilities.

Native educational leaders are lobbying Bush to "leave no child behind" and to fund schools adequately in his 2003 budget. They have yet to see the 1 billion dollars promised by Bush for improving Native American education. Hopefully, funding levels will increase during the next fiscal year.

Land Claims

In 2001, few - if any - Native communities won in their efforts for either the return of land taken illegally or for monetary compensation for lost land. The Timbisha Shoshone Tribe has yet to receive any acreage in Death Valley, although they were promised that this would occur in a 1983 ruling. The Lakota, who view the sale of the Black Hills of South Dakota as illegal, received monies for this land. Like the Hopi, however, the Lakota refuse to touch money given for land.

Currently, the Wichitas and affiliated Tribes, located in Oklahoma, are fighting Texas for the right to control the use of their ancestral lands in that region. It is legal for private landowners in Texas to sell individuals permits to dig on their property for artifacts once belonging to the Wichitas and their affiliates. So far, the state of Texas has not stopped this practice.



MEXICO AND CENTRAL AMERICA

BEST COPY AVAILABLE

MEXICO

During the first half of 2001, the most important events for the indigenous world, and for the country as a whole, were the "march for dignity" to Mexico City by the EZLN *comandantes*[1] – with Insurgent Sub-Commander Marcos at its head – and the debate on constitutional reforms relating to indigenous rights and culture.

The March of those who are the Colour of the Earth

The march began on 24 February, lasted 17 days and covered more than two thousand kilometres passing through 13 states, until arriving in the capital of the Republic to implement a prolific agenda.

Two important objectives of the march are worth mentioning. The first was the interaction the EZLN was able to establish with the most representative sections of the national indigenous movement through a national indigenous meeting held in the community of Nurío de Michoacán, in which the EZLN and the indigenous movement ratified their desire to promote legal reforms relating to indigenous autonomy and self-determination. According to the newspaper *La Jornada* (5 March 2001), around 3,383 delegates from 41 indigenous peoples attended this event, coming from 27 states of the Republic. Some 5,000 observers were also present.

The second aim of the march was to demonstrate, by their presence, their full support of the initiative for constitutional reform on indigenous rights and culture, formulated by the Commission for Concord and Peacemaking (COCOPA) as a result of the first Peace Dialogue discussions in San Andrés Larráinzar, Chiapas in 1996. President Vicente Fox had sent this to the Congress of the Union as one of his government's first actions and in fulfilment of his campaign promise to the indigenous movement. For this reason, a central point on the agenda was the proposal that the EZLN command should take the platform at the Congress of the Union to explain to the 500 deputies and 128 senators, and the nation as a whole, the reasons why the Amerindian peoples were in favour of this initiative.

Throughout February and March, the most significant national issue was the presence of the Zapatista command in the country's capital. There was not one social sector in the country that did not express an opinion in the face of such a significant event. The Congress of the Union, and even the parties comprising it, were polarised

between those in favour and those against the Zapatista demands. Finally, on 28 March, from 11 in the morning until 3 in the afternoon, the Chamber of Deputies (without the senators) and, via national television coverage, the whole country heard the moving words of the Zapatista command.

Constitutional Reform in the Congress of the Union

What came next was an intense national debate on the constitutional reform and its promulgation. This has passed through various stages, the latest of which – as of February 2002 at least – has yet to be concluded. First, the reform was approved by the Congress of the Union. Then, it was sent to the local assemblies for their ratification because the law establishes that, for constitutional reforms to enter into force, the approval of 16 state legislatures is required. The reform had to be debated in the state congresses, where it would be endorsed or rejected. If a majority approved it, it would be accepted and promulgated by the nation's executive power. If rejected, it would have to return to the Congress of the Union for amendment.

BEST COPY AVAILABLE

This long discussion process on reform kept the indigenous movement active throughout the country, and the country's attention remained focused on it for several months, right up until September 11, 2001. With the collapse of the twin towers in New York, the world's attention, and that of Mexico's along with it, turned to other problems and the Chiapas conflict and the rights of indigenous peoples once more lost centre stage in the national arena.

With the Zapatista march, they had managed to win the battle to legitimize their struggle in the eyes of public opinion. However, power groups within the Senate, in an alliance between the National Action Party (PAN) and the Institutional Revolutionary Party (PRI), stood firm in their position to refuse to accept COCOPA's proposal. Unexpectedly, on 26 April 2001, the Congress of the Union approved a law on Indigenous Rights and Culture that sidelined COCOPA's proposal and minimised the scope of indigenous rights. This reform was immediately rejected by the main indigenous organisations in the country.

The Zapatista Response

Three days later, the EZLN issued two press releases in which it stated its rejection of the reform, noting that it "in no way responded to the demands of Mexico's Amerindian peoples, of the National Indigenous Congress, of the EZLN, or of national and international civil society" and that it

> *[B]etrayed the San Andrés Accords in general and, in particular, the so-called "COCOPA initiative for a law" in its fundamental points: autonomy and self-determination, Amerindian peoples as subjects of public law, lands and territories, the use and enjoyment of natural resources, the election of authorities and the law of regional association, amongst other things.*

In addition, the said reform "prevents the exercise of indigenous rights and represents a serious offence against Amerindian peoples, national and international society, as it disregards the mobilisation and consensus the indigenous struggle has achieved".

Similarly, it reproached and criticised President Vicente Fox for being a "sham", by trying to make the indigenous movement and public opinion believe that the COCOPA law had been his own whilst, in fact, he had done nothing to push it through and, faced with the more hard-line sectors of his party, which have consistently

refused to recognise indigenous rights, he had simply given way.

With the reform, notes the EZLN's press release, the deputies and government of Vicente Fox have closed the doors on dialogue and peace, as

> *[T]hey avoid resolving one of the original causes of the Zapatista uprising; they give the different armed groups in Mexico a* raison d'être*...and try to break up the national indigenous movement by giving the state congresses an obligation of the Federal Legislative Power.*

For which reason, "the EZLN formally refuses to recognise this constitutional reform on indigenous rights and culture" as it sabotages the incipient process of rapprochement between the federal government and the EZLN, "betraying hopes for a negotiated solution to the war in Chiapas, and revealing the total divorce of the political class from popular demands".

With the reform, the EZLN declared the nascent exchange it had initiated with President Fox's government suspended, and stated that "there will be no more contact between the Fox government and the EZLN". Dialogue would be re-established, it declared, when COCOPA's legal initiative was approved, for which reason "the Zapatistas will continue our resistance and rebellion".

Ratification of the reform in the states of the Republic

The constitutional mechanism that obliges one half plus one (16) of the local congresses of the 31 states of the Republic to approve or reject a constitutional reform offered new hope for a re-opening of the discussion on the reform that had been approved by the deputies. In the states of the Republic, indigenous organisations were active in putting pressure on the legislatures of their states to vote against the reform.

It was significant that two governors, of the states of Oaxaca - José Murat - and Chiapas – Pablo Salazar- called publicly at national level for the state legislatures to reject the reform. Many sectors of the population called on the country not to approve the reform. For example, on 13 June 2001, more than one hundred Mexican artists and intellectuals signed a document in which they expressed their rejection of the Law on Indigenous Rights and Culture approved by the Federal Congress the previous April.

The outcome could not be predicted: the disputes, alliances and political balances kept public opinion on tenterhooks. In the end, and

by a small margin, the reform was approved by 19 of the state legislatures. It is important to note that the reform was overwhelmingly rejected in all states with a majority indigenous population. Such was the case in Oaxaca, Guerrero, Chiapas[2] and San Luis Potosí, among others. The reform was approved by the vote of legislatures in states where the indigenous population is not in the majority, which clearly minimises the legitimacy of the reform.

Promulgation of the reform

Once the ratification process in the state congresses had come to an end, the government of the Republic promulgated a decree regarding the reform, publishing reforms to constitutional articles 1, 2, 4, 18 and 115 in the Official Journal of the Federation (DOF). The Indigenous Law thus entered into force on 15 August.

The government went ahead with promulgation of this law despite the fact that many sectors of the population and the indigenous movement demanded that it refrain from doing so until the Supreme Court of Justice had passed judgement on the issues raised in objection to the reform. Because the fact is that, in an immediate reaction following the deputies' approval of the reform in April, various people such as the governor, deputies, and 400 municipal presidents from Oaxaca, deputies from the PRD, PRI and PVEM[3] in the Tlaxcala state congress, the municipalities of Molcaxac (Puebla), of Texcaltepec (Veracruz), Copalillo (Guerrero) and Comalcalco (Tabasco), the indigenous Mazahua communities of San Miguel Xoltepec and San Antonio de la Laguna (Mexico state), and communities and municipalities in Chiapas, amongst others, all presented constitutional lawsuits against the reform as, they argued, it detracted from the rights that some peoples had already won under state laws. In addition, quite clearly, the precepts contained within the reform were in contravention of ILO Convention 169, which forms part of the constitutional law of Mexico.

On hearing the government's decision, the indigenous organisations added their weight to the EZLN's pronouncement that described the reform as "a betrayal of the Mexican state". The same day that President Fox promulgated the "anti" COCOPA law, hundreds of people from indigenous and civil organisations protested outside the Congress. Inside, a group of deputies were demanding that the government undertake "a reform of the reform". And, as a majority of those involved said, the law was "stillborn".

This is the scenario in 2002: the EZLN continues to wait for the Supreme Court of Justice to pass judgement on the issues raised in

objection to the reform. At the same time, a group of deputies is promoting "a reform of the reform". Others are hoping that Vicente Fox will fulfil his many promises in this respect. And, in fact, under pressure from pro-Zapatista activists abroad, the president declared that he would promote a discussion of the reform but it has to be assumed that, on returning to the country, he forgot about the new commitment he had made, as he has not mentioned the subject since. Meanwhile, various indigenous players continue to reject the reform whilst, in other states, some indigenous organisations are making the most of the commitment undertaken by their deputies in approving the law to try to win rights that were previously denied them.

October 12 was the context for marches in a number of the country's towns, organised by indigenous organisations to commemorate the 509 years of indigenous resistance and to protest at the entry into force of the constitutional reform on indigenous rights and culture approved by the Congress. A number of indigenous organisations came to Mexico City to protest the same issues.

And so, hoping that in the spring of 2002 the courts would decide on the legal validity of the reform or demand its revision, the EZLN and indigenous organisations continue to wait. It is unknown how the armed rebels will react following the court's judgement: whether they will remain silent during the last five years of Vicente Fox's government (as they did with ex-president Ernesto Zedillo in his last four years in government) or whether they will organise another new initiative to put them once more in the national limelight, from which they have momentarily been displaced due to the serious problems being debated in the country, an economic crisis and the hike in prices of basic services (such as electricity). International events since September 2001 and President Bush's escalating war against "terrorism" also focus people's concerns elsewhere.

The Plan Puebla-Panama

Various analysts have established a direct link between the economic mega-projects – particularly those known as the "Plan Puebla-Panama", the "Meso-American Corridor", the mega-projects of the Tehuantepec Isthmus, the Pacific and Golf Corridors, to name but a few - being favoured by the current administration and the refusal of the Fox government and his PAN party to approve the initiative for legislative reforms on indigenous rights, including recognition of the territorial rights of the indigenous peoples in the terms of the precepts contained in ILO Convention 169.[4] In fact, the concepts that were most

80

discussed during the national debate on indigenous reform were precisely the terms territory, autonomy and self-determination. The links between both issues are obvious: the rights of indigenous peoples to their territories, autonomy and self-determination would form a thorn in the side of these business initiatives.

In March 2001, the federal government made known the "Basic Document" of the Plan Puebla-Panama (PPP). In the section entitled "Scope of Action", the PPP is described as a "visionary long-term integrated development plan whose geographic scope within Mexico covers the nine states of the south-south-east (Campeche, Chiapas, Guerrero, Oaxaca, Puebla, Quintana Roo, Tabasco, Veracruz and Yucatán) and within Central America the seven countries of that region (Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama)". The PPP region as a whole comprises more than 62 million inhabitants (CIEPAC 2001).

According to its appraisal, the south-south-east region of Mexico is where the country's indigenous population, along with the country's greatest poverty, is concentrated, covering 25.7% of the national territorial area and "considered by the Mexican federal government to be a strategic region for national development". The Fox government has focused its economic policy on the country's greater integration into the global economy in order to face up to the economic crisis Mexico is suffering. During the first five months of the Fox government, from November 2000 to April 2001, 255,000 jobs were lost in the country, according to official sources and, at the same time, the government has had to accept zero growth during its first year in office.

The Fox government's policies and legislative actions have been contradictory in terms of facing up to the country's main problems. On the one hand, while justifying the indigenous reform of "restricted rights" for indigenous peoples, they offered greater financial investment in exchange (in fact, the reform contains a paragraph promising strong public investment) noting that, "the problem of indigenous peoples is not one of rights but one of poverty", hence the greater economic resources on offer.

The reality was somewhat different. Social development institutions, including the National Indigenist Institute (INI), suffered serious budget cuts for 2002 (and INI's continued survival has even been threatened, and a transfer of its functions to the local states has begun) and, at the same time, rural sector resources were cut and subsidies withdrawn from electricity. Given this situation, combined with the impact of the crisis in Argentina, and strongly affected by the recession in neighbouring USA, the Mexican government is insisting on initiating mega-projects in the south of the country.

The search for alternative strategies

However, these proposals gained no sympathy from the different popular sectors, in particular the indigenous organisations, who feel threatened by foreign capital, particularly in a context of the lack of legal protection for their territories that results from the approved reform. So they stated their complete rejection of all mega-projects. In order to face up to these threats, various indigenous organisations, together with sectors of civil society have begun a process of reviewing the mega-projects and are endeavouring to design alternative strategies with which to challenge them.

In May 2001, the border town of Tapachula, Chiapas played host to the First Forum for Information and Analysis, in which 250 representatives from 109 civil society and production organisations from around Central America took part. Six months later, the second forum was held in Xelajú, Guatemala, from 22 to 24 November, with more than 800 delegates representing 300 social organisations from Mexico and Central America, accompanied by observers from Canada, the USA and various European countries. The "imposed globalisation" of free trade agreements, in particular the PPP, was widely discussed in this forum. In the Declaration it was stated that,

> *For the men and women attending the Xelajú Forum, the PPP is a prefabricated geo-political project that seeks to build a services and infrastructure zone in Meso-America, designed from the logic of transnational business, national oligarchies and international financial institutions. The aim of this project is to create a service infrastructure for the exportation of goods, the exploitation of our natural resources, biodiversity and labour of our peoples and in no way responds to the social logic of Meso-American peoples and communities. (CIEPAC, 2001).*

And so the struggle for recognition of the territorial rights, autonomy and self-determination of indigenous peoples takes a new turn, now forced to face up to threats from the transnational capital that will presumably arrive with the mega-projects, without there being any guarantee that such a strategy will be able to stop the deepening of already severe poverty caused by the economic crisis in the country.

The struggle of the indigenous peoples of Guerrero

The most significant events in Guerrero were the participation of four indigenous peoples, the Mixteco, Nahua, Tlapaneco and Amuzgo, in

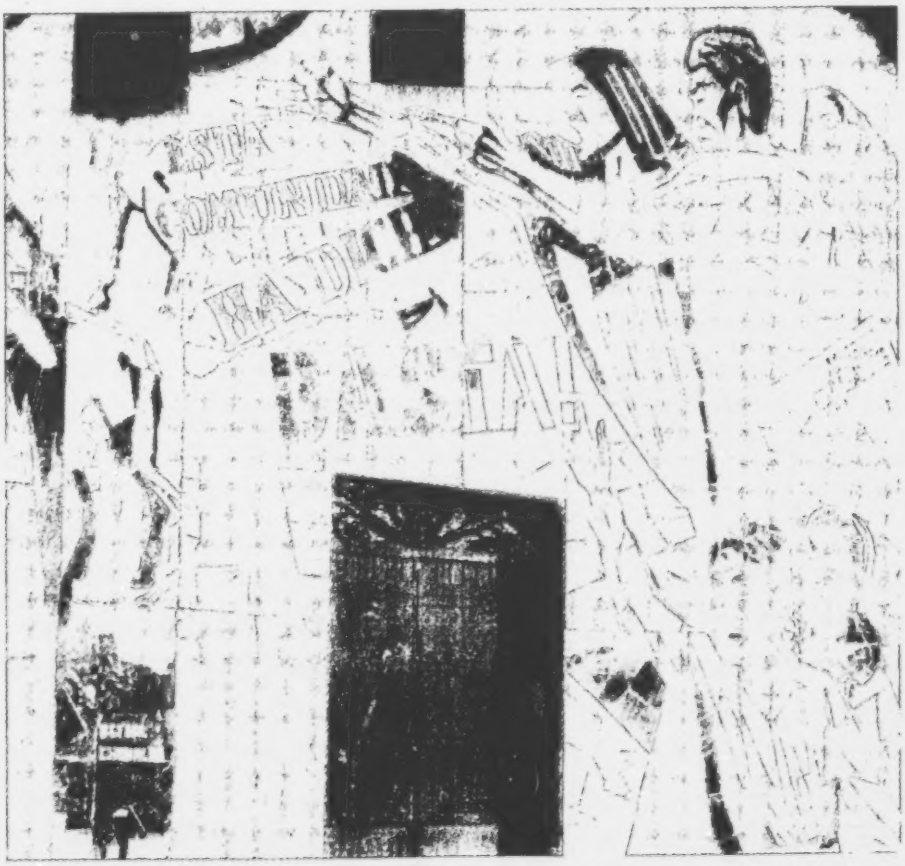
the mass rally held in the town of Iguala for the purposes of the Motorcade March of the Zapatista command, and the occupation of the local congress by indigenous authorities and organisations demanding that local deputies reject the Indigenous Law approved by the Congress of the Union. This determined action to block Congress and demand a public dialogue with the 45 local deputies led the state government to respond by reopening previous investigations against eighteen indigenous leaders accused of insurrection, rebellion and sabotage. The three state powers joined forces to discredit and criminalize the state's indigenous movement.

Throughout this period, very tense and difficult moments were experienced due to the political conflict that continues unresolved in the indigenous municipalities of Xochistlahuaca, Acatepec and San Luis Acatlán. The crux of the conflict revolves around the cacique-like and corrupt attitude of the municipal authorities who assert their authority over the indigenous authorities at a whim and without taking into account the decisions of the communities.

Community Police

In the municipalities of San Luis Acatlán, Azoyú, Malinaltepec, Metlatónoc and Atlamajalcingo del Monte, they have managed to consolidate a project of the Tlapaneco and Mixteco peoples known as the "Public Security System for the Indigenous Peoples of Montaña and Costa Chica", known locally as the "Community Police". Calling on their rights as peoples, they formed the Regional Coordinating Body of Indigenous Authorities which, via mandate of the Regional Assembly, has taken responsibility for administering justice in the area. The response to this form of autonomy, which has demonstrated to the state authorities and all citizens its effectiveness at reducing crime and public insecurity, has been one of a fabrication of crimes and persecution of their leaders on the part of the state authorities. On 11 February 2002, five members of the Regional Coordinating Body of Indigenous Authorities were violently arrested by the State Police Investigators just as they were in the process of electing their new leadership. They were accused of having illegally detained non-indigenous people and deprived them of their freedom. This persecutory action outraged the majority of indigenous communities in the region, who immediately marched on the municipal centre of San Luis Acatlán to demand the immediate liberation of the indigenous authorities. Given the racist and arrogant attitude of the Investigating

Cirilio Plácido Valerio, member of the Indigenous Community Police, San Luís Acatlan
Photo: Diana Vinding



Mural on town hall in Santa Fe de la Laguna, a P'urhépecha community in Michoacán
Photo: Diana Vinding

BEST COPY AVAILABLE

Officer and of the police in general, the situation was at the point of turning into a serious confrontation. On 12 February, the five detained leaders were freed on bail and eight court files containing eighteen arrest warrants against members of the Community Police were reviewed. A record was signed of each case revision, demanding the withdrawal of the warrants, seeking respectful coordination between the authorities and fighting for constitutional recognition of their collective rights, autonomy and legal diversity from the legislative power.

The situation in Chihuahua

The Rarámuri and Ódame[5] unexpectedly burst onto a scene new to them, that of their rights as peoples. The signs of danger can be found in history. The celebration of 500 years of dominance, the agrarian counter-reforms, the Free Trade Agreement and the 1994 Zapatista uprising in Chiapas were all warning signs. The Zapatista awakening also reached northern Mexico, organising, illuminating, transforming.

These peoples have had to take many changes on board. They have incorporated into the national indigenous movement, they now relate to other Amerindian peoples, they appoint young authorities, dialogue with policy makers... One major change is that of meetings of traditional authorities which, before, were only tolerated as impositions, and always challenged. Now they have adopted them as an exercise of interculturality in order to understand, come to terms with history, create a consensus among all and thus defend their existence.

Disdain as a state policy

Ironically, the greatest promoter of change has been the government itself. Its policy of disdain of the Amerindian, of calculated indifference and racist scorn, has been constant and has provoked a reaction from the peoples. As a result of the meetings of traditional authorities, on 23 May 2001 a letter was written to the Chihuahua deputies demanding a consultation prior to the approval of the indigenous law. It ended thus: "We have always lived here with no respect for our Indigenous Rights and Culture". This letter represented 67 Rarámuri and Ódame authorities. The response was one of disdain. The deputies told them they had no time for a consultation, and if they wanted one they should do it themselves. They responded with realism on 7 June, "We will hold a consultation...We are aware that this will not

take place before the approval or rejection of the issue currently under debate. However, we know that it is important as indigenous peoples to strengthen ourselves through this consultation process".

For six months, and with no resources, hitching lifts or on foot, they covered their territories, they provided information in Sunday meetings, they gathered community records. Finally, they presented the results to the state congress on 12 December. They brought 64 community reports, and 4,567 signatures against the law. They say in their report,

> *Indigenous people... categorically reject the law that has been approved. All the communities state that we want to continue living as we have always lived, with our customs, traditions, communal work, to have our own way of social organisation, our own way of meting out justice, of electing our traditional authorities, of having a culturally-focused education, of using the land and natural resources collectively and occupying the territory as our ancestors charged us to. This has been our life for many years and, with this law, we are being denied the rights that the ancients gave us. The approved law - far from respecting the experience of the Rarámuri and Odame peoples - takes from us what we have been and what we have been doing for many, many years.*

Once more they were met with disdain. They were reproached for getting involved in issues they knew nothing about, they were told that they were not policy makers or lawyers, that they did not have the signatures of all indigenous people in Chihuahua, that their work meant nothing without official backing.

Notes and references

1 EZLN - Ejército Zapatista de Liberación Nacional/Zapatista National Liberation Army.
2 In Chiapas, 27 deputies voted against and 5 in favour of the law.
3 PRD: Democratic Revolutionary Party; PRI: Institutional Revolutionary Party; PVEM: Green Ecology Party of Mexico.
4 See, in this regard, documents produced by the Centre for Economic and Political Research into Community Action, CIEPAC, AC.
5 The Rarámuri (92,000) and the Odame (7,000) along with the Warijó (1,000) and the Pima (5-600) mostly live in the Sierra Tarahumara of Chihuahua state. (Editor's note)

GUATEMALA

Throughout 2001, the situation of indigenous organisations in Guatemala was marked by an abandonment of the peace process following the FRG's[1] accession to power in January 2000 and by an ongoing confrontation between government and civil society. The year began with a rescheduling to 2004 of the still unfulfilled Peace Agreement commitments, and ended with a controversial report from MINUGUA (the UN Verification Mission in Guatemala), which suggested that,

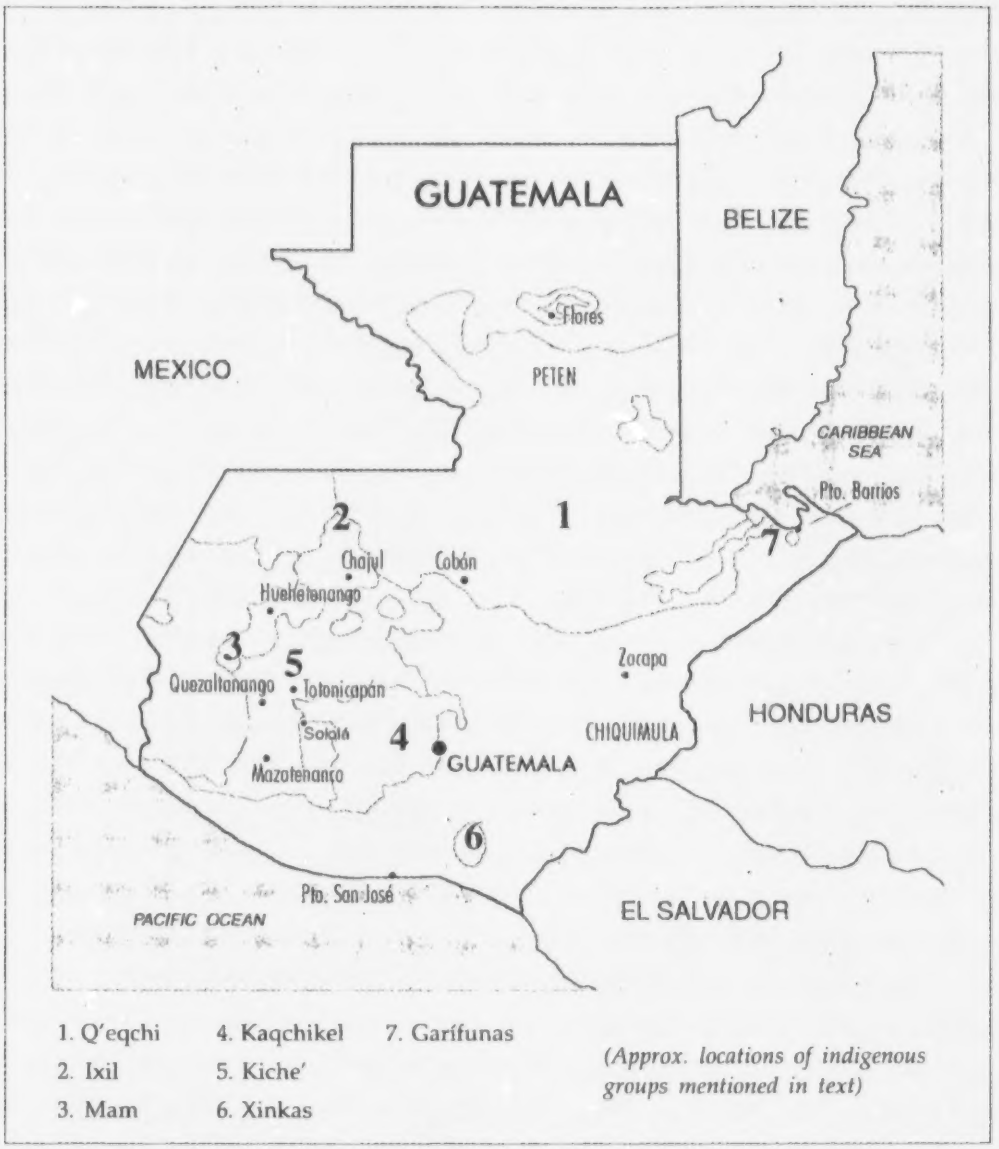
> *...commitments relating to indigenous peoples are amongst those that have shown the highest level of failure...This is not in line with the proposed changes in the Agreements but encourages the persistence of an exclusive monocultural model.*[2]

In its report, the Head of Mission described Guatemala as a "de facto apartheid". In fact, the indigenous issue is no longer high on the public agenda, and indigenous organisations are relegated to attempting to reorganise and find a space in which they can continue their struggle.

The slow weaving of the "*huipil*"[3] of peace

The Agreement on Identity and Rights of Indigenous Peoples provided for the establishment of a series of Parity and Specific Commissions which, in 1998-1999, offered a number of proposals with regard to the officialisation of indigenous languages, educational reforms and the creation of a Land Fund. The most important proposals were, however, abandoned following the negative results of the referendum of May 1999. On reaching the end of their mandate, some commissions were terminated, such as the Commission on Language Officialisation. Others were modified, for example the Educational Reform Commission, which became a part of the Consultative Commission, and others continued functioning, including the commissions on Land and "Reform and Participation at all Levels".

The rescheduling at the beginning of 2001 meant that some of these Commissions' periods of work were extended. The Reform and Participation Commission thus presented proposals for a reform of the Municipal Code and a new law on Development Councils; the Indigenous Women's Rights Commission presented proposals for the Law



against Sexual Harassment; and the Land Commission sought the creation of an "Agrarian Ombudsman" to resolve land conflicts, in the face of what it considered the ineffectiveness of the government office created for this purpose. Finally, in October, the Commission on Spirituality and Sacred Places was re-established, after more than a two-year break in its functioning. In his inaugural speech, the Secretary for Peace said that this was yet another step "in the slow and delicate weaving of the huipil of peace".

But the weaving of this *huipil* is taking far too long and, for the moment, has more holes in it than delicate handiwork. For many sectors, rather than bearing any content, such progress is merely

BEST COPY AVAILABLE

symbolic and the government's desire to fulfil the Peace Agreements has yet to be confirmed. Serious examples are the Peace Secretary's scant budget, the government's insistence on symbolic issues and the stagnation of proposals when they go before the Congress of the Republic. In addition, the government retains COPMAGUA as a partner even though this body has lost all legitimacy within the Mayan movement.[4]

Faced with this outlook, various proposals are being made to force progress by alternative paths, such as working directly with the Congress of the Republic instead of with the Peace Secretary, overcoming what was the institutionalisation of peace.

The challenges of working within the State

Whilst the government's commitment to peace seems lukewarm, to say the least, one of the components of this peace process has received rather a boost: educational reform. This is due to close coordination between the civil society organisations supporting this reform and also the role of Dr. Demetrio Cojtí as Vice-Minister for Education. His first step at the beginning of this year was to establish the Great National Dialogue to define the content of the reform. In addition, he has promoted Bilingual and Intercultural Education, one of the objectives of which has been to train a minimum of 11,000 teachers in reading and writing their own languages.

However, working within the government is not without its costs, as Cojtí found when he had to ask the directors of the National Programme for Educational Self-Management (PRONADE) to leave his office after complaining that they had gone several months without pay, or when he had to defend a Literacy Campaign's questionable methods and meagre results. Mrs. Otilia Lux, Minister for Culture, has also experienced similar situations. One difficult moment for these officials was in July when they had to defend the government's position regarding the VAT - Value Added Tax - to a group of Mayan leaders meeting for that purpose.

The continual accusations of politicisation, inefficiency and corruption aimed at the Guatemalan Indigenous Fund (FODIGUA), created in 1995, were the subject of much press coverage for several weeks in May and June. Following a debate between organisations, institutions and even the government, as to whether the institution should be reformed or whether the government should intervene, the

issue lost its interest value and FODIGUA continued, but with even less legitimacy than before.

Another ongoing problem is the minimal budget allocated to the Mayan bodies within the State. This has been the case since 1990 for the Academy of Mayan Languages, and is now being repeated with the General Directorate for Bilingual Intercultural Education, the Indigenous Women's Ombudsman and the Indigenous Ombudsman within the Attorney-General's Office for Human Rights.

Reorganisation within the Mayan movement

The years 1999 and 2000 were dark moments for the organisations that form the Mayan movement: their attempts to express their unity through COPMAGUA had failed and the constitutional reforms were at a halt.[5] However, they soon began to attempt to reorganise. Although very different in terms of their objectives, composition or ways of working, all the associations were agreed that they should avoid excessive institutionalisation and promote a dialogue and reflection on what had happened.

Last year, the "Mayan Forum" appeared around the problems of FODIGUA, the "Platform" sponsored by MINUGUA, and the "Space for Mayan Political Coordination", which is to work on proposals for reforms to the Electoral Law. In addition, regular meetings have been organised with senior Mayan officials in the government.

A recurrent theme within these circles has been the advisability of creating a political party. There is growing awareness that political change will not come about without parliamentary representation. The temptation to set up an exclusively "Mayan" party is giving way to the conviction that there is a need for inter-ethnic alliances and "intercultural" programmes. The example of the Xel-Ju' Civic Committee which, from a mixed indigenous and non-indigenous platform, has managed to govern Quetzaltenango – the country's second largest city – for two consecutive terms, has carried great weight. However, the Committee did not make a public appearance when, on 12 December, Mr. Alfredo Tay Coyoy – from Quetzaltenango and ex-Minister of Education – presented the Political Party for Pluralist Organisation in Guatemala (Pop-Gua) to the Civic Register.[6] It seems that Xel-Ju' and other groups behind it were abandoning the initiative.

In addition, the National Guatemalan Revolutionary Unity party (URNG), ex-guerrillas turned politicians, held its General Assembly in August. There were at least 7 Maya in its new National Executive

90

Committee and among its leadership could be found the three Mayan deputies that sit in the Congress of the Republic: Pablo Ceto, Gregorio Chay and Alberto Mazariegos.

The URNG still needs to rethink its relationship with its historic allies in the popular movement. Recent experience seems to suggest a continuing lack of sensitivity towards the ethnic issue, such as the time it tried to "democratise" the indigenous Town Hall of Sololá – a customary institution with its own legitimacy – only managing to cause conflict between the indigenous people of this town. In spite of its part in COPMAGUA's failure, it has still not clarified its current links with this body. In June, COPMAGUA reorganised, and is now formed only of bodies related to the URNG, plus Xinka and Garífuna representation,[7] and yet some URNG leaders state that they do not recognise COPMAGUA.

At the same time, new associations are being consolidated, such as Kaqla' – which reflects on gender, ethnicity and power on the basis of personal experience – or Moloj – aimed at training Mayan women for political posts. There are also the organisations of spiritual leaders, such as Oxlajuj Ajpop or the Gran Confederación Kaqchikel, which participate in the Parity Commission on Sacred Places.

The visibility of the Maya

The images Guatemalans retained this year of their indigenous compatriots were linked to rather unpleasant events, such as the Ch'orti' girl from the eastern department of Chiquimula, who died of malnutrition at the end of August. One of the causes of increased hunger has been the collapse of coffee prices on the world market. This has affected farmers all over the country, both indigenous and non-indigenous. For this reason, current data indicates that malnutrition and famine levels are currently running at much higher levels than previously.

In addition, clashes over land, such as that in Los Cimientos, Chajul, demonstrate the intra-community conflicts that have been dragging on since the 1980s, with population relocations and the reorganisation and militarisation of community structures.

The public complaints made at the Cobán Folklore Festival in July were another significant event. The outgoing Rabin Ahau – Daughter of the Community – denounced the organisers' discrimination and maltreatment of her and, out of solidarity, her successor refused to accept the post. This position, which was supported by a number of Mayan women's groups, shook one of the symbolic bases of tourism

in Guatemala, along with the monopoly of those who benefit from it. One illustration of the increasing lack of visibility of the Maya and their specific demands is the peasant farmers' marches of 12 October, which have always demonstrated the links between the peasant struggle and indigenous resistance. This year, virtually no ethnic demands were raised and hence the proposal for an "Indigenous Peoples' Law", presented by the National Peasant and Indigenous Coordinating Body (CONIC) at the end of the demonstration, went largely unnoticed.

But perhaps the most spectacular and disturbing event for the whole country was the "riots" of Totonicapán and Cobán on 1 August. In these two towns, the population's demands in the face of the imminent approval of an increase in VAT flared up with such force that the government declared a state of siege and sent in tanks to patrol the streets. This popular uprising against corruption and abuse of power in these two municipal centres with a strong indigenous presence provoked the return of "a fear of the Indian". Nonetheless, it was a short-lived conflict and, a few days later, the situation had returned to normal. President Portillo took advantage of the occasion to make a populist gesture of recognition of Mayan institutionality by signing an agreement with the Auxiliary Mayors of Totonicapán.

Notes and references

1 *Frente Republicano Guatemalteco*: the Guatemalan Republican Front, a party established and led by ex-General Efraín Ríos Montt who, during 1982 and 1983, was responsible for the worst massacres commited by the Guatemalan army. The Constitution prohibits him from standing for presidential election as he has led a previous coup d'état and so Alfonso Portillo stood during the 1995 and 2000 elections.

2 **UN Verification Mission in Guatemala (MINUGUA). September 2001.** "Los pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de Paz" ("Indigenous Peoples of Guatemala: overcoming discrimination within the context of the Peace Agreements") Verification Report. Page 7.

3 Huipil: a blouse that forms part of the Mayan women's traditional dress. It is normally woven by the women themselves.

4 The Coordinating Body of Organisations of the Mayan People of Guatemala (COPMAGUA) emerged in 1994 as the joint Mayan body for the peace process and, after 1996, centralised the work of the parity commissions. Due to internal problems, two of its five coordinators left in 2000, leaving only those linked to the URNG.

5 In this respect, see the relevant *The Indigenous World* reports for those years.

6 In several Mayan languages *"pop"* means kitbag and *"gua"* tortilla, two factors of clear indigenous identification.
7 The Xinkas from the south of Guatemala and the Garífunas from the Atlantic Coast are two non-Mayan linguistic groups.

NICARAGUA

Political and legislative developments

National elections took place on 4 November 2001. These comprised presidential (and vice-presidential) elections, legislative elections for national and departmental deputies, plus elections for members of the Central American parliament (PARLACEN).

Competing in the departmental elections alongside the two most powerful parties, the Constitutionalist Liberal Party (PLC) and the Sandinista National Liberation Front (FSLN), were two regional parties: Yapti Tasba Masraka Nanih Asla Taranka (YATAMA) and the Party Movement for Coastal Unity (PAMUC). YATAMA performed most notably, gaining 11.3% of the regional vote in the North Atlantic Autonomous Region (RAAN), but this was still insufficient for them to gain one of the three departmental seats for this autonomous region. It is worth mentioning, however, that the Miskito deputy, Leonel Pantin Wilson, was re-elected as a PLC member, the only indigenous deputy in the National Assembly.

At national and regional level, the Constitutionalist Liberal Party, Nicaraguan Christian Path (Camino Cristiano Nicaragüense) and the Nicaraguan Resistance Party (PRN) all participated under the banner of the Constitutionalist Liberal Party Alliance (PLC), winning the national elections with 56% of the votes, followed by the FSLN with 42%.

Of the four municipalities with a majority indigenous population, the PLC Alliance gained a majority of the votes in Waspam and Prinzapolka in the RAAN, and in Desembocadura de Río Grande, in the South Atlantic Autonomous Region (RAAS). For its part, the FSLN gained a majority in Puerto Cabezas.

Regional elections 2002

In line with the provisions of the Law of Autonomy, promulgated in 1987, the first regional elections were held on the Caribbean Coast of Nicaragua in 1990. Given that their term of office lasts four years, further elections for the two Autonomous Regional Councils, each made up of 45 elected members plus the regional deputies, are due to take place on 3 March 2002. This body is the highest authority within the two autonomous regions, and a guarantee of the laws relating to representation of indigenous peoples and ethnic communities.

In the RAAN, the PLC, FSLN, PAMUC, YATAMA and the PRN will contest these elections. With the exception of PAMUC, the above parties will all also contest the RAAS elections.

In the RAAN, there are 108,791 people eligible to vote and in the RAAS 74,806, according to the official figures of the Supreme Electoral Court (CSE). However, poor organisation on the part of the CSE and a marked apathy, particularly in the geographic areas inhabited by a

BEST COPY AVAILABLE

mestizo majority, added to extensive disagreement with the way in which the process of autonomy is going and a lacklustre electoral campaign, all presage an abstention rate of more than 50% in these constituencies.

Approval of laws

During 2001, various laws were approved that directly affect the lives of many indigenous communities. One such law is Law 387, the Special Law on Exploration and Exploitation of Mines, promulgated by the National Assembly on 26 June 2001.[1] The regulations governing Law 387[2] were subsequently issued by the Presidency of the Republic. The main criticism of this mining legislation is that it encourages big capital investment, favouring those companies that obtain concessions for exploration with exploitation rights. The interests of traditional gold mining, known as guirisería in Nicaragua, remain on a secondary level in relation to industrial mining.

The Law Declaring and Defining the BOSAWAS Biosphere Reserve has caused greater controversy among the population of the Caribbean Coast of Nicaragua. This was approved by the National Assembly on 14 November 2001,[3] with no consultation and infringing the participation rights of the community blocks located within this immense reserve of more than 7,000 square kilometres. Two of the community blocks belong to the indigenous Mayangna-Sumo peoples, Mayangna Sauni As and Mayangna Sauni Bu, in addition to the Sikilta community. Three more blocks are communities of indigenous Miskito people: Miskitu Indian Tasbaika Kum, Kipla Sait Tasbaika and Li Lamni Tasbaika Kum.

Ratification of ILO Convention 169 on the part of the Nicaraguan government is still pending. This legal instrument is being vigorously demanded by the indigenous communities of the centre and north of Nicaragua.

Regional autonomy

The decentralisation process remains at a standstill and the administrative, economic, political and social powers defined in the Autonomy Statute (Law 28) have not been taken on board by the regional authorities. The general perception is that the regional councillors act according to the agenda of their member parties and not that of the people who elected them, thus putting party interests above those of the region. This situation is reinforced by an absence of political will to strengthen the process of autonomy on the part of successive national governments.

The dramatic frustration with authorities which, according to the majority of the population, do not work is illustrated in the results of a survey carried out by the Institute for the Promotion of Democracy (IPADE) and entitled "Political Culture, attitudes towards the elections and the regional and municipal systems of autonomy".[4] Information from this survey, undertaken in September 2001, highlights the fact that 43.9% of those surveyed consider that the Regional Government, as it currently stands, is of absolutely no use to them, whilst 42% think that it is of little use to them.

Socio-economic aspects

The map of extreme poverty

Backwardness, misery, discrimination and marginalisation have been the constant features of indigenous life. In Nicaragua, as in other countries, a number of contributory factors mean that the indigenous population is amongst the poorest of the poor. Most recent evidence comes from the national survey of households, which measures living standards, undertaken in 1998 by the Government of Nicaragua and the results of which were published in 2000 and 2001. The available data shows that top place in the survey in terms of extreme poverty went to five communities, four of which are located in the RAAN[5]: Prinzapolka, Waspam, Bonanza and Puerto Cabezas. Coming in third was the municipality of Desembocadura de Río Grande in the RAAS. With the exception of Bonanza, all the municipalities mentioned have a majority Miskito population.

Natural disasters

2001 was not free from natural disasters and, once more, the onslaught of nature affected the RAAN. The climatic phenomenon of greatest impact was a nine-day rain storm caused by tropical depression no. 15, which began at the end of October 2001 and caused serious flooding in the municipalities of Rosita, Puerto Cabezas, Waspam and Prinzapolka.

The rivers Coco (Wangky), Wawa, Lycus, Kukalaya and Bambana burst their banks and affected many indigenous communities with populations settled along the banks of these rivers.

According to information from Rev. Norman Bent, the attorney (*procurador*)of the Indigenous Peoples and Communities,[6] 6,192 families were affected and more than 3,400 homes damaged, of which 180

were destroyed. Crop losses were in excess of 20,907 *manzanas*[7] of maize, rice, beans, bananas and tubers such as cassava and quequisque (malanga or Xanthosoma violaceum). For its part, the Ministry of Transport and Infrastructure calculated the damage to 696 kilometres of roads in the RAAN at 90 million córdobas (approximately 6.3 million USD).

It should be mentioned that, as in the past, once again the capacity to support the victims was inadequate given the magnitude of the disaster.

The process of legalisation of indigenous communal lands

The legal and institutional framework

During the period in question, there was little progress made within the National Assembly in terms of reaching a consensus on the two draft bills on the system of communal property, the first presented by the Presidency of the Republic in October 1998 and the second submitted by the Regional Councils in September 2000.

In some analysts' opinion, the main obstacle to progress is section 1 of the Autonomy Statute (Law 28) which establishes that, "Communal lands are inalienable, they may not be given, sold, seized or mortgaged, and they are imprescriptible." A significant number of deputies from the governing party do not accept this regulatory framework for communal property, which prevents communal territories or lands from forming part of the land market.

The ruling of the IACHR in favour of the Sumo-Mayangna community of Awas Tingni

The most significant event of 2001 was the decision of the Inter-American Court of Human Rights (IACHR),[8] on 31 Aug. 2001, in favour of the Sumo-Mayangna community of Awas Tingni. This judgement initiates a new stage in the extended dispute between the community and the Government of Nicaragua regarding ownership of their ancestral territory and the forest resources existing within it.

The IACHR recognized the legitimacy of the Awas Tingni community's claim and concluded that the Government of Nicaragua had violated the community's property rights. The Court thus imposed an obligation upon the Nicaraguan state to delimit, demarcate and title the Awas Tingni territory. The Court prescribed that Nicaragua should pay the sum of US$30,000 in legal costs and invest a further US$-

50,000 in social projects, as compensation for the emotional distress suffered by the community.

In an IACHR press release,[9] Dr. Santiago Cantón, Executive Secretary of the Court, indicated that this decision had transcended the borders of Nicaragua and the Americas and represented one of the most significant achievements in the protection of indigenous peoples internationally. The Indian Law Resource Center in the US,[10] which represented the community, considered the Court's decision to be a precedent of great international significance, in addition to being an instrument of vital importance in the defence of indigenous people's human rights in Nicaragua. According to information from this Centre, this was the first time that an indigenous community had appealed to international jurisdiction in defence of its rights, and the first time that an international court had recognised the rights of indigenous peoples to their land and natural resources.

In fulfilment of the Court's judgement, on 22 February 2002, Ambassador Lombardo Martínez handed over a cheque for US$30,000 to the Inter-American Commission so that it could pass this sum on to the Awas Tingni community in payment of the costs and expenses incurred by the members of this community and their representatives. On this date, both parties also agreed to present a plan of action with which to continue to fulfil the Court's decision at the next meeting, to be held in Managua during the third week of March 2002.

Commercialisation of communal property

As in the previous year, in 2001 the scandalous transactions of the Greek American businessman, Peter Tsokos, continued to form the most publicised aggression against the system of communal property. Following the controversial sale of 4 of the so-called Cayos Perlas in the RAAS, Mr. Tsokos once more hit the news, offering 6,000 manzanas of land, considered to be communal lands, in the municipality of Laguna de Perlas, for sale on the Internet for the sum of US$360,000. He had previously proceeded to break up 7 plots in the area of Monkey Point, more specifically in Punta de Águila, a territory ancestrally inhabited by indigenous Rama. As a consequence of a series of legal appeals introduced in Bluefields by representatives of the Rama people, judge Anabel Omeir issued a ban on the sale until it could be clarified as to whether the indigenous people were the owners or not.

By way of conclusion

From the perspective of indigenism, the most outstanding event of the year was the IACHR decision regarding Awas Tingni. This legal interpretation lights a new flame along the path of the historic claims of the indigenous peoples of Nicaragua.

In 2002, there was renewed hope that the new Regional Councils would take on a more aggressive and functional role, overcoming a virtually parasitic public Treasury situation and their subordination to hegemonic national party directions. By giving a majority vote to the PLC, trusting in the promises of President Enrique Bolaños, a significant percentage of the indigenous population is also renewing its faith in the fact that the new liberal government will include the Caribbean Coast in national policies and will begin to establish regulations governing the Law on Autonomy, will begin to demarcate and title community lands and will begin to have more effective control over the exploitation of natural resources. The coming months will show whether there has been significant progress in the desired direction or whether these hopes and expectations on the part of indigenous peoples and other ethnic minorities in Nicaragua will once more end in frustration.

Notes and references

1 *La Gaceta*, Official Newspaper, No. 151, 13 August 2001.
2 *La Gaceta*, Official Newspaper, No. 4, 7 January 2002.
3 *La Gaceta*, Official Newspaper, No. 244, 24 December 2001.
4 *La Prensa*, 3 March 2002.
5 Government of Nicaragua. 2001. *Map of Extreme Poverty in Nicaragua.*
6 *La Prensa*, 20 November 2001. Subsequently, tropical depression no. 15 turned into Hurricane Michelle, which caused devastating damage the whole length of its path, particularly on the island of Cuba.
7 1 *manzana* is the equivalent of 0.7 has. (Editor's note)
8 Inter-American Court of Human Rights, Case of the Mayangna (Sumo) Awas Tingni Community vs. Nicaragua. Decision of 31 August 2001.
9 Inter-American Commission on Human Rights. Press Release No. 8/02.
10 Legal Resource Centre for Indigenous Peoples. Press Release No. L/AT/PRESS/1, 23/2/2002.

PANAMA

In the concert of nations, Panama occupies the 52nd place in the Human Development Index. This is on a par with other countries of the continent, such as Trinidad and Tobago (49) and Mexico (51). It is below countries that are considered high on the human development scale, such as Spain (21), Argentina (34) or Costa Rica (41) (UNDP Report-Panama, *La Prensa*, 2002). But when we look at these figures, the warning indicators all flash with regard its indigenous peoples. As we can see in the same report, it states that, "the Ngobe-buglé are one of Panama's most affected ethnic groups in terms of poverty. In some comarcas, more than 90% of the inhabitants are destitute. Infant mortality due to malnutrition-related illnesses is a spectre that haunts the indigenous population". But this occurs not only amongst the Ngobe, other indigenous peoples are also in a similar situation. The development of indigenous peoples exists only on paper and in government plans, but is never conscientiously implemented.

Village not on the map

Proof of this marginalisation can be found in an article in one daily paper entitled, "Panamanian village not on the map". The newspaper article stated that:

> *Jirote is a village lost in time and space. The village does not appear on maps of the Republic of Panama, nor do its almost 200 inhabitants appear in the National Census. Located in the thick forests of the province of Bocas del Toro, more than ten hours by foot, the indigenous Ngobe-Buglé do not know their country, and nor does their country know they exist.* (Panamá América, 2002)

This shows how little the indigenous communities mean to the Panamanian authorities, and that it is not only poverty that plagues these communities but also the direct effects of social and political problems. The most important of these for 2001 are detailed below.

Tense situation on the Colombian border

The Colombia Plan and the internal war in that country are now spilling over the border. Hundreds of displaced Colombians are arriv-

ing in Panama fleeing the war and, for the Emberá, Wouanan and Kuna who live along the borders with Colombia (Darién Province and the Kuna Yala Comarca), 2001 was another year of uncertainty and fear.

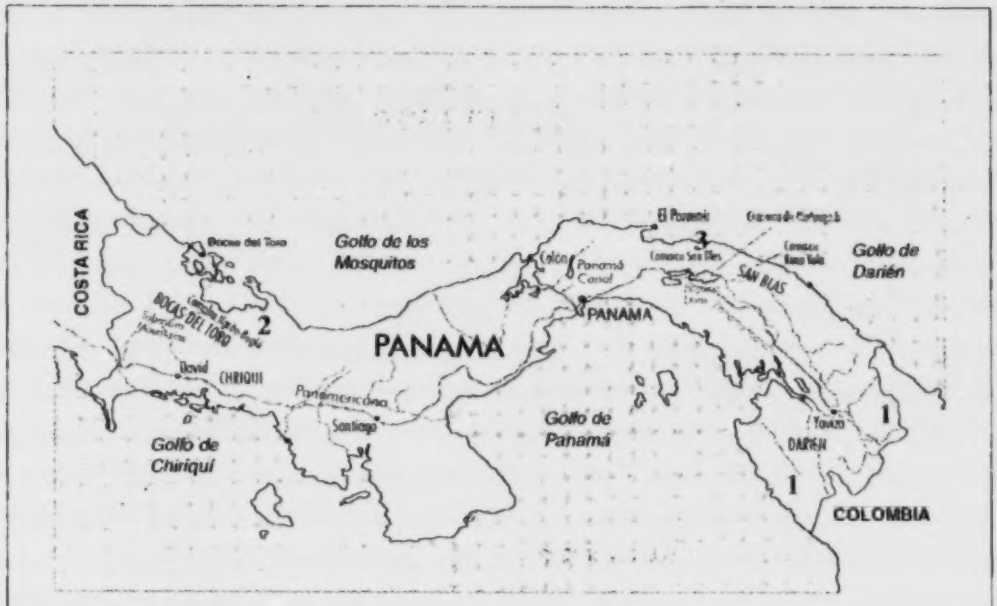
Teaching provision on the part of the Ministry of Education in this area was virtually nil last year due to the fears of the teaching staff, who do not wish to continue to put their lives at risk. This has also discouraged many indigenous children from continuing their studies. Many of these villages have experienced a mass exodus of their inhabitants towards the country's capital.

The creation of new laws in favour of indigenous peoples

Two laws benefiting indigenous peoples were ratified by the government in 2001/2002. Both highlight the struggles of indigenous peoples throughout history since the arrival of the Europeans on the continent of Abya Yala.

Law No.5 of January 2002 "declares 12 October a National Day of Reflection on the Situation of Indigenous Peoples and pronounces other provisions". It should be noted that, with this law, Panama becomes one of the few countries in the whole of Abya Yala to recognise 12 October as a day of "reflection", highlighting the struggle of indigenous peoples to preserve their culture and traditions. This law was approved following two years of discussion and is a very significant legal norm. Although it creates no rights, it will enable changes to be made to national history texts in the very near future which, at the moment, are not absolutely correct in their interpretation of the existence of indigenous peoples before and since Christopher Columbus.

Another law is No. 41 which, "declares 5 August each year to be Civic Day in Commemoration of SIMRAL COLMAN (Ologuindinbipilele)". Ologuindibipilele (a Kuna name), known as Simral Coman by the non-indigenous, was one of the intellectual authors of the Kuna Revolution of 1925 and who, through his wisdom, was able to encourage the young Kuna of the time to stand up to the colonial policy that wished to "integrate" the Kuna forcibly into the Western culture or ineptly named "civilisation". The new law represents the country's recognition of one of the indigenous peoples' spiritual guides.



1 Embera Wauman
2 Ngobe-Buglé
3 Kuna

(Approx. locations of indigenous groups mentioned in text)

Kuna and Emberá bring case before the IACHR

With funding from the World Bank, work began on the Bayano hydro-electric power station (in the south-east of Panama) in 1976, in an area directly inhabited by the Kuna of Bayano, known in law as the Kuna de Madungandi Comarca. In its early stages, the dam affected eight Kuna and three Emberá communities. Along with the communities, cemeteries and sown fields disappeared under the floodwaters and hundreds of forest animals had to be moved to safety. The future of the Panamanian economy was achieved at the expense and sacrifice of one of the poorest and most marginalised sectors of the country. Once all recourse to dialogue had been exhausted and, following years of demanding solutions to their problems, the communities – tired of so many promises – decided to sue the Panamanian state for failure to fulfil its obligations. For this, they granted powers to the Popular Legal Assistance Centre (CEALP) and the Napguana Association so that, together with the International Human Rights Department of the College of Law of the American University, they could submit a petition for violation of their human rights to the Inter-American Commission on Human Rights (IACHR) on their behalf. In

BEST COPY AVAILABLE

this petition, they also requested fulfilment of the agreements signed between the government and indigenous leaders. The indigenous peoples affected have declared that the state violated their fundamental human rights in the following ways:

1. Right to ownership of land: The dam affected the lands on which indigenous communities were established. In addition, the Panamanian state has not prevented the illegal invasion of their lands by non-indigenous settlers. In the case of the Emberá, the state has not legalised the lands they have been occupying since their relocation in 1975.
2. Right to housing: The artificial dam destroyed entire indigenous communities, leaving many indigenous families exposed to the elements for several days.
3. Right to health: The dam caused water to stagnate, which has led to the appearance of new diseases, and an increase in fatal illnesses such as malaria in the region.
4. Cultural rights: The creation of the lake affected cultural rights in terms of sacred sites, cemeteries and biological reservoirs, as well as places where the indigenous people practised their religion.

In spite of the fact that the indigenous communities of Alto Bayano have lost their best lands, the Panamanian state is still not providing electricity to these communities and the few lands that are left to them are invaded each year by settlers. To this must be added the Pan-American Highway, which passes right through the middle of these communities and on towards the Darién forests. Despite the fact that the indigenous peoples affected have done everything possible to negotiate and reach an agreement with the various governments of the last twenty years, regardless of party or ideology, none have found a solution for them, hence the idea to take the government to the international courts.

The IACHR visits Panama

The Inter-American Commission on Human Rights undertook a visit to Panama from 6-9 June 2001. One of the activities of particular importance during this visit was a tour made of the Kuna de Madungandi comarca, specifically to the community of Akua Yala. The aim was to research and collect information on the ecological, social, economic, cultural, spiritual and religious damage in relation to the complaint made by the Emberá and Kuna de Madungandi popu-

lations affected by the construction of the Bayano hydroelectric power station.

Of the issues and suggestions dealt with by the Commission, it was noted that it was of great importance to examine the exhaustion of internal legal recourse. For its part, the Kuna de Madungandi General Congress and Emberá representatives ratified their petition before the commissioners, which consisted of compensation for the losses caused by the work, the legalisation of Emberá lands and a true development plan for all of Panama's indigenous communities.

In search of a friendly solution

The IACHR received the lawsuit by means of Petition No. 12354 of 21 September 2001, *"Kuna de Madungandi and Emberá of Bayano Panamanian Indigenous Peoples v. the State of Panama."*

In accordance with article 41 of the IACHR regulations, the petitioners then requested that a friendly solution be considered with regard to the violation contained in the original petition. This latter was received by the IACHR in a hearing held in November 2001. A first round of meetings took place in January 2002 and conversations are currently being held to seek a friendly solution between the indigenous peoples and the government of Panama.

New dams on indigenous territories in Panama

The recently created Ngobe-Buglé Comarca (1997) is being threatened by the forthcoming construction of two hydroelectric power stations, Tabasara I and II, following approval of the Environmental Impact Study by the National Environment Authority (ANAM). This study was condemned by indigenous Ngobe and peasant farmers due to its untruths and technical deficiencies and because of the lack of consent obtained from the comarca's indigenous authorities. In this regard, the Kuna lawyer, Hector Huertas, lodged an appeal to nullify the decision before the Third Court of the Supreme Court of Justice which agreed, by means of a decision dated 21 December 2001, to the request to suspend construction of the first hydro-electric power station until it was decided as to whether the EIA was violating the laws of the comarca and environmental laws or not.

In relation to the same issue, the Ombudsman, Juan Antonio Tejada, met with a group of indigenous people and peasant farmers opposed to construction of the hydro-electric projects and stated that

all consultation procedures with the affected communities had to be exhausted, and that he would ensure that this took place.

Similarly, it is worth mentioning that the construction of new hydroelectric power stations (dams) is a threat to other indigenous territories, such as the future Naso Teribe Comarca in the province of Bocas del Toro, where studies for the construction of the Teribe 1 and Teribe 2 hydroelectric power stations have been undertaken. This construction would also affect the international *Parque Amistad* or Friendship Park existing between the countries of Panama and Costa Rica.

SOUTH AMERICA

BEST COPY AVAILABLE

COLOMBIA

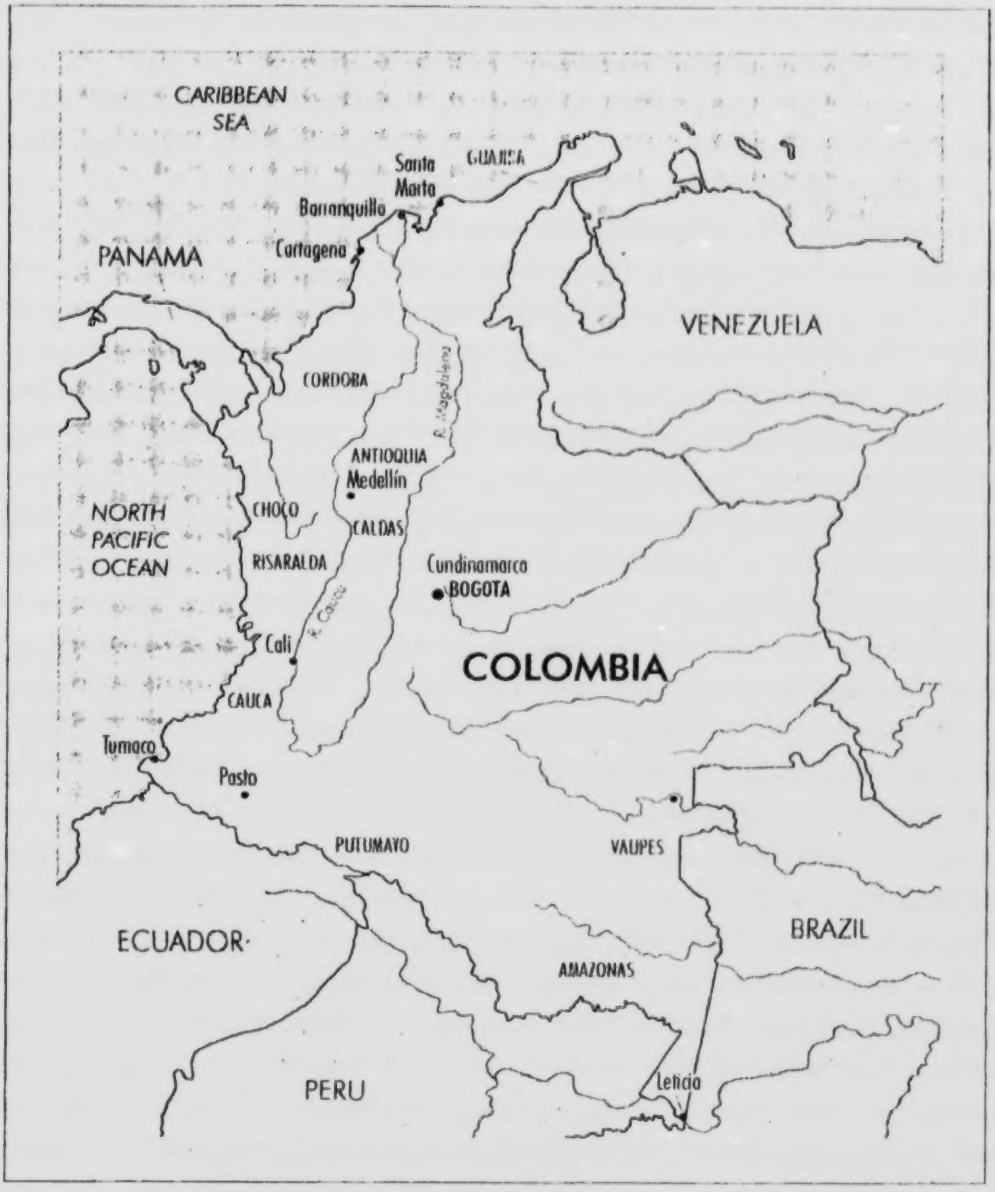
Colombia continued to be marked by violence during 2001. Statistics for that year speak for themselves:

- Over the last two years, every day has seen an average of 20 socio-politically motivated deaths among Colombians. Of the 2,529 civilian deaths recorded in the period October 2000 – March 2001, 2,080 were caused by extra-judicial execution or political murder, 264 by forced disappearance and 185 by the murder of socially marginalised groups. Eighty-three per cent of these deaths were attributed to the paramilitary forces, 13% to guerrilla groups and 4% to the armed forces. Of these victims, 67 were children, 93 were young people and 163 were women, highlighting the fact that the state is unable to guarantee even the protection of the most vulnerable sectors of society.
- Forced displacement has become the most serious humanitarian crisis in the history of Colombia. According to statistics from the Department for Displacement and Human Rights, CODHES, it is estimated that 31,375 people suffered forced displacement in 2000. The figures are similar for 2001. According to Amnesty International, 20% of all the world's internally displaced population is to be found in Colombia. Women form 56% of the displaced population, whilst 55% are under the age of 18. Thirty-one per cent of women have become heads of household due to the death or desertion of their husband or partner.

A disinstitutionalized war

The war has intensified in comparison with the previous year as a result of its increasingly disinstitutionalized nature. The following are four of the main ways in which this is demonstrated:

1. The civilian population is caught in the crossfire, the deliberate victim of the confrontation. Whole territories and populations remain subjected to a kind of "armed clientilism" on the part of all players in the war, trying to incorporate indigenous, peasant and Afro-Colombian populations into their ranks, populations who are not involved in the conflict and who are making tremendous efforts to remain on the margins of this confrontation.



2. There is a growing importance within the war mechanism of an illegal economy based on the production and marketing of illegal drugs. This can be seen in the overlap between areas of coca and poppy cultivation and the areas of greatest dispute between the guerrillas and the paramilitaries.

3. The state's loss of authority and the absence of alternative organic projects on the part of the guerrilla insurgents has led to stagnation in the peace process and the continual expansion

BEST COPY AVAILABLE

of paramilitary groups, which are now to be found throughout the national territory and even in the large cities.

4. As intimidation and domination by force of arms grows stronger, the actions of the guerrilla insurgency become increasingly illegitimate, thus encouraging ever-stronger paramilitary groups. Their advances have enabled them to snatch strategic territories from the Colombian Armed Revolutionary Forces-Popular Army (FARC-EP). The paramilitaries are gaining increasing recognition from many sectors and those advocating an end to the peace negotiations with the FARC-EP are becoming stronger. The presidential candidate, Álvaro Uribe, who has based his campaign on "hard-line" policies against the insurgency and proposals for the intervention of foreign troops in the Colombian conflict, currently enjoys 39.5% in the opinion polls, above that of the experienced liberal politician Horacio Serpa (30.7%) and the "independent" Noemí Sanín (16.9%). Luis E. Garzón, the candidate of the Left, scarcely manages to gain 1%. Four months back, Horacio Serpa headed the polls, 15 points ahead of Álvaro Uribe.

Under such circumstances, Colombians fear that a generalised civil war may become established, of enormous cost in terms of damage to the country's economic infrastructure and human rights violations. This would be followed by a return to the negotiating table but with an economy in tatters, an even weaker civil society and a mistrustful population.

Almost all the victims of the Colombian massacres and forced displacements have been either peasant, indigenous or Afro-Colombian populations. This situation is causing these groups to change the territorial defence, control and appropriation strategies they have been implementing in order to resist the land privatisations promoted by the neo-liberal model, the establishment of Malaysian-type agro-industrial models for the African palm, the development of mining mega-projects and the continually expanding agricultural frontier in the Orinoquia, Amazonía and Pacific regions, which benefits landowners who have hogged all the good agro-ecological lands for livestock farming. The peasant reserves, indigenous reservations (*resguardos*) and collective territories for black communities are now the focus of attention of transnationals seeking lucrative concessions for the extraction of natural resources, including their mega-biodiversity.[1]

Peoples in resistance

All the successful struggles of the indigenous movement are now in danger, as the war that is currently being fought in Colombia is being played out principally on their lands.

The state's apathy, the clearly anti-indigenist nature of its economic and social policies, the impossible hope of state behaviour that was closer to the spirit of the 1991 Constituent Assembly and the fact that the National Committee for Coordination and the Commission for Human Rights of the indigenous peoples were being ignored led the National Indigenous Organisation of Colombia (ONIC) and the Indigenous Authorities of Colombia (AICO) to break off relations with the government in July 2001. But the massacres of Paece individuals in Cauca, the murder of indigenous leaders in Alto Sinú, Cauca, Chocó, Risaralda, Caldas and Putumayo, along with the forced displacement of some indigenous communities has led them to declare themselves to be *Peoples in Resistance.*

Resistance strategies

In order to guarantee their ethnic survival, the preservation of their territories and the strength of their own governments in the face of any change that may occur in the territorial dynamic of the conflict, indigenous peoples have began to test out different strategies:

- The establishment of zones of refuge.
- The establishment of special zones for the development of basic food security projects.
- Direct action on the part of indigenous authorities in the absence of a response from governmental and non-governmental humanitarian agencies. Examples of this are the cases of the search for Kimy Pernía in the paramilitary zone of Tierralta (Córdoba), and the protest demonstration of 30,000 indigenous Paece, Guambiano and Coconuco peoples that descended on Cali, the main city in the south-east of Colombia.
- The humanitarian dialogues of the indigenous authorities and governments in the zones under guerrilla influence.
- Actions of community protection, through the strengthening of *alguaciles* or indigenous civic policemen, an age-old institution of all indigenous peoples and one that was the basis of the strategy for land recovery in the 1970s and 80s, of territorial

and natural resource control during the 1990s and of social internal control throughout history.

- The creation of spaces for dialogue with other popular sectors in order to seek unity in the face of the conflict, such as the "Space for Co-existence, Dialogue and Negotiation" held in the indigenous "resguardo" La María in Cauca, the aim of which was to bring together different expressions of civil society to present proposed solutions to the country's armed conflict.[2]
- Permanent communication between the different indigenous leaders and organisations in order to coordinate their actions in the face of the worsening humanitarian situation caused by the armed conflict.

Popular mobilisations in defence of their settlements

Over the past few months, demonstrations to prevent those involved in the conflict from carrying out barbaric acts against indigenous towns and non-combatant civilian populations have been gathering force. One such example is the case of the indigenous municipality of Caldono in Cauca. Here, the population took to the streets with music and organised barricades to block the path of an armed contingent of the FARC that was trying to take the town centre. In the face of this popular reaction, the FARC was forced to withdraw. Months earlier, the FARC had destroyed the town's police station, and along with this its school and a number of houses. This strategy was copied by peasant and indigenous populations in the municipality of Bolívar, and also in Cauca. In January 2002, road blocks were recorded in the department of Guajira, in the north of the country. Here, for several days, peasant and indigenous villagers demanded that the Colombian Self-Defence Units (AUC), well-known paramilitaries, leave the region. These and other actions on the part of the population in the department of Santander, which have prevented armed groups from venting their anger on the civilian population, demonstrate not only the desperation of the people in the face of the state's "reluctance" to afford them effective protection but also the fact that the people are ready to resist the violence with protests, albeit at great risk.

Congresses of indigenous peoples

Although these strategies for indigenous resistance are taking place in a number of the country's regions, the organisations have realised

that they are insufficient to prevent the armed conflict and its mounting humanitarian tragedy. There has thus been a renewed desire to join forces with the popular movement in order to discuss a proposal for a "new country", following the direction and experience of the indigenous peoples of Cauca who, in an alliance with the department's popular sectors have been drawing up a proposal for a society in which the excluded and oppressed will become social players, with the capacity to intervene and generate proposals for peace.

With this aim, the indigenous organisations convened a National Congress of Indigenous Peoples, held in December 2001 in the Cota (Cundinamarca) indigenous reservation. This meeting was organised not as

> *[A] meeting for ourselves, in order to resolve our problems, for we have said that if there is not peace for all Colombians then nor will there be peace for the indigenous peoples...We do not want peace and justice for ourselves alone, while the rest of the population starve to death on the streets...and so it is logical that we do not want a peace in which we ourselves have to disappear.* (Taken from the official announcement)

Prior to the National Congress, the indigenous peoples of Cauca had held an extraordinary Congress because of the difficult situation they were experiencing, with an increase in armed action on the part of both guerrilla and paramilitary forces on their territories, which claimed the lives of around 50 indigenous people in 2001. The last straw was the murder of the historic leader, Cristóbal Sécue, at the hands of the FARC. Approximately 20,000 indigenous people headed for Cauca to demand respect for their lives and autonomy for their authorities.

For its part, the National Indigenous Congress reaffirmed the indigenous peoples' territorial autonomy in the face of the war. It also stated its political will, after several years of isolation, to revive the process of building a Popular Social Block which, as an alternative focus of power, might gain a space for self-expression that could influence the Peace Process and thus avoid it being built behind the backs of the indigenous, peasant and Afro-Colombian communities. In the working groups, the participants emphasised the need to prevent the communities and organisations from becoming involved in the armed conflict and the need for the armed players to respect the authorities and the autonomy of the indigenous peoples on their own lands. It also endorsed the resistance strategies being implemented and strongly criticised the FARC for discrediting the indig-

enous civic police. All in all, the meeting was just what people had been yearning for. They needed to talk through their fears, express their disapproval, feed on the experience of others, unite their willpower and give new strength to their struggles and protests. The congress also unanimously decided to symbolically run the disappeared leader, Kimy Pernía Domicó, as candidate for Colombian president. This congress, which lasted six days, was attended by indigenous people from a number of Central and South American countries, and various friends from Europe, Canada and the United States.

Nonetheless, popular participation was limited to the presence of a number of union, peasant and Afro-Colombian leaders who participated in the closing ceremony of the Congress. This once more highlighted just how fragmented Colombia's popular movement is, another consequence of the war. But it also showed that, in this tragic phase of their history, the indigenous people continue to stand alone, increasingly dependent upon international solidarity for the continued defence of their territorial autonomy and for their continued existence as peoples.

In spite of these important indigenous resistance strategies, which demonstrate a unity and a will to continue to undertake joint efforts in order to survive the war, the political scene in terms of elections is much more fragmented. Around 15 candidates are standing for election to two special constituencies for indigenous people. In these March elections, genuine representatives of the indigenous struggle will compete against those who are merely playing at politics. Although the indigenous people are very clear as to who their true representatives are, there is a danger that people foreign to their struggles may be elected by the solidarity vote of the large cities.

Epilogue

With the ink not yet dry on this article, the President announced the end of the peace process, after three and a half years of discussions. He spoke at 9.20 p.m. on Wednesday 20 February, ordering the armed forces to begin to take the demilitarised zone as of 12.00 p.m.. That same night and before the early hours of the morning had arrived, around 100 air missions had been undertaken by a fleet of 30 aircraft, destroying almost all the logistics centres of the FARC (bases and airfields, training camps etc.) with laser-guided

bombs. In the following three days, more than 250 bombs were dropped, including the 500 pound MK82, largely to destroy tunnels and underground bunkers.

The peasant population began to abandon the countryside and move towards the urban centres, fearing the arrival of paramilitaries accusing them of collaborating with the guerrillas. The scene is one of all-out war and the media are broadcasting images of bombardments in the style of the aerial attacks on Afghanistan. The commander of the air force, General Héctor Fabio Velasco, has stated that the nighttime air raids will be intensified with the help of new helicopters soon to arrive in the country, equipped with night sights that enable high resolution fields of vision. In spite of this euphoria for war that has invaded both the armed forces and a high percentage of Colombians, uncertainty still reigns, as civilian victims of these bombardments are already beginning to be reported.

No one knows what will now happen in the country, but everyone predicts the worst. President Pastrana ended his speech on Wednesday with the words "....may the archangel Saint Michael protect us", thus commending the country's fate to a celestial spirit. The archangel Saint Michael is supposed to be the angel of repentance, justice and mercy. We do not know if it was to these attributes that the President was appealing. Because, in the Bible, the Book of Revelations mentions that this archangel was responsible for leading the guardian angels in the fight against the devil and for freeing those that had fallen under Satan's power. And the name given by the generals to this operation, "Operation Thanatos", is also a bad omen. But perhaps they are right, as death is now going to pervade the country, through the miserliness of its ruling classes, the arrogance of the guerrillas and the adventurism of the military forces.

Notes

1 The 85 indigenous peoples in the country alone have, in the form of reservations (*resguardos*), around 20 million hectares, or a fifth of the national territory.

2 It was at one of these meetings in La María that it was decided to hold a Congress of Indigenous Peoples of Colombia.

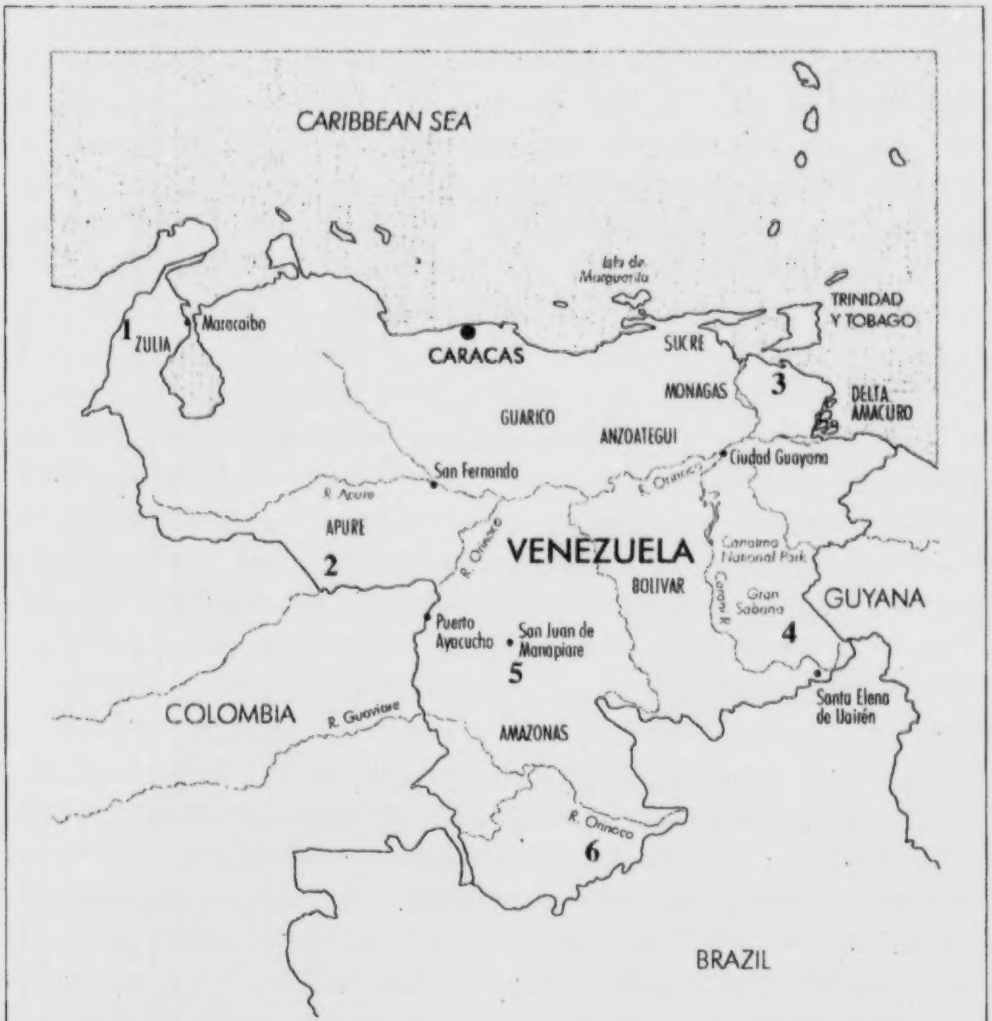
VENEZUELA

Since approval of the new constitutional text in 1999, the legal situation of Venezuela's indigenous peoples has improved significantly. Recognition of their existence as peoples, and of their ancestral rights, has forced the different bodies and institutions of the public authorities to respect and consider their presence, through the voice of their representatives and organisations. Proof of this is in the appointment of Noeli Pocaterra, an indigenous Wayyú deputy, as vice-president of the National Assembly, in a fierce negotiation in which the weight of the three indigenous votes made itself felt in the decision-making process within the Venezuelan parliament.

In spite of a favourable legislative outlook, a number of events took place during the period covered by this report that highlight the need to ensure that the space gained within the state's political structures is not lost. In this respect, in the formal session held in the National Assembly on 5th July 2001 to celebrate the signing of the Act of Independence, the Wayyù representative read the said Act and, wearing a Guajiran *batola*[1] and headscarf, announced: "In other words, the struggle continues." [2]

Draft Organic Law on Indigenous Peoples and Communities

In December 2001, the draft *Organic Law on Indigenous Peoples and Communities* was presented to the National Assembly for its plenary discussion with the aim of developing the constitutional norms and ILO Convention 169, relating to indigenous peoples, within the context of the Legislative Agenda of the Permanent Commission for Indigenous Peoples. This bill was formulated on the basis of an initial draft and its final result was the product of a number of workshops and consultation processes undertaken with the indigenous peoples and communities during the second half of the year in the states of Amazonas, Anzoátegui, Apure, Bolívar, Delta Amacuro, Monagas, Sucre and Zulia. These workshops and consultations were organised by the National Assembly, with the participation of various indigenist experts and collaborating bodies such as state governments and legislative councils, the Ombudsman, the National Agrarian attorney's office etc. The aim was to find out and include observations on the text and to ensure that it reflected the spirit of the rights of indigenous peoples as enshrined in the Constitution of the Bolivarian Republic of Venezuela.



1 Wayyú 4 Pemón
2 Pumé 5 Yagarana *(Approx. locations of indigenous groups mentioned in text)*
3 Warao 6 Yanomami

In the text, aspects such as the land and habitat of indigenous peoples and communities, their culture, language, economy, collective intellectual property, political and civic participation, bilingual intercultural education system, health and traditional medicine and jurisdiction are developed, and the creation of the National Institute for Indigenous Peoples is provided for, to be an autonomous body within the state enabling indigenous people to control and decide their own priorities for economic, social and cultural development.

BEST COPY AVAILABLE

The Amazonas State Constitution

During 2001, a draft Constitution for the State of Amazonas was submitted for discussion to the State Legislative Council, in which the opinions of neither the indigenous organisations nor representatives of the sector, which form part of the various regional public bodies, were taken into account, ignoring the pluricultural and multi-ethnic nature of the region in its basic regulatory text.

For this reason, in June 2001 in Puerto Ayacucho, representatives of the Regional Organisation of Indigenous Peoples of Amazonas, ORPIA, the Ombudsman, the indigenous deputies Guillermo Arana and Wilson Lara and the indigenous mayors of the municipalities of Manapiare and Autana met to formulate a proposal for inclusion into the said legal text. The proposal dealt primarily with aspects impacting on the existence of indigenous peoples and communities, such as the declaration of Amazonas state as a multi-ethnic and pluricultural political entity whose task it is to guarantee the ethnic and cultural diversity of the indigenous and non-indigenous communities living within its territory, and the use of indigenous languages as official languages within the region alongside Spanish, amongst other things. In spite of this, the previous draft bill was approved by the regional legislative body at its first reading, without including the said proposal. This now puts the attainment of the ancestral rights of the original inhabitants of the Venezuelan Amazon in danger. It is still hoped that the proposal may be included at the second and final reading.

The demarcation process

During 2001, significant progress was made towards achieving the national process of demarcation of the habitat and lands of the indigenous peoples. This was due to approval of the *Law of Demarcation and Guarantee of the Habitat and Lands of Indigenous Peoples* (see Venezuela in *The Indigenous World 2000-2001).* For the first time in Venezuela, this specifies the right of indigenous communities to the collective ownership of their lands.

In this context, on 7 August 2001, the President of the Republic decreed the creation of the National Demarcation Commission, chaired by the Minister for the Environment and Natural Resources, Ana Elisa Osorio Granado, and made up of a total of 16 members appointed in accordance with traditional consultation mechanisms and also including the Ministries of the Environment and Natural

Resources, Education, Culture and Sports, Defence, External Relations, Energy and Mines, Production and Trade, and Interior and Justice.

The aim of this Commission is to promote, supervise, advise, implement and coordinate all aspects of the process of demarcating the habitat and lands of the indigenous peoples and communities. On 17 January 2002, as mandated, it thus approved its Internal Regulations governing the way in which it will operate. These regulations are binding both on the members of the commission and on the members of the Regional and Local Commissions, which will be auxiliary management bodies at these levels.

Despite the fact that the demarcation of indigenous lands has not been achieved within the time period established in the Constitution (which was two years from December 1999), there are strategic alliances, sympathies and spaces within the national public authorities, both state and municipal, that create conditions conducive to encouraging and guaranteeing its continued progress. In the states of Amazonas and Bolívar, the Piaroa and Yekuana ethnic groups are progressing with self-demarcation processes which will be reviewed and considered in line with the law.

Situation of the bilingual intercultural education system

In June 2001, the draft *Law on the Education of Indigenous Peoples and Communities and Use of their Languages* moved forward, via a process of consultation with the indigenous populations of the states, to its ninth version in which it seeks to develop, for the first time, the right to their own education. This is because the Bilingual Intercultural Education System as it has been implemented to date in Venezuela meets the socio-cultural specifics, values and traditions of these peoples, but from a western educational model, which prioritises learning within the spatial boundaries of the school.

In this bill of law, a group's own or traditional education is defined as "the systems of upbringing and socialisation unique to each indigenous people and community, through which the elements that constitute their culture are transmitted and recreated". In this context, during 2001 and early 2002, the Pemón and Yekuana Teaching Guides were published, designed by the teachers as a first step in the reform of the curricular design, coordinated by the Department for Indigenous Affairs (DAI) of the Ministry of Education, Culture and Sports and sponsored by UNICEF.

During this period, an assessment of the educational situation was also undertaken by the Permanent Commission for Indigenous Peoples and Communities, following 22 years of application of the intercultural system, which was showing serious failings, represented by the low level of literacy among the Warao communities, for example, and the crisis within the DAI, the system's implementing body. In this regard, and following analysis, it was agreed: to demand the declaration of an emergency among indigenous peoples, to demand a decree from the national executive to reorganise the DAI, which should take into account all of civil society that is involved in indigenous issues and declare the DAI in a transitional period until the Organic Law of Indigenous Peoples and Communities creates a governing body for this area.

Actions for the respect of collective intellectual property

The organised indigenous communities of Amazonas, represented by ORPIA, raised a voice of protest against the various scientific projects that have been implemented over the last three years, in which these peoples' collective intellectual property rights have not been respected. A number of national and foreign universities have been carrying out their experiments and research without taking the original inhabitants of the territories into consideration and, what is even more serious, have used them as the objects of their study, without their consent.

Because of this, in September 2001, ORPIA presented a proposal to the Autonomous Department for Industrial Property attached to the Ministry for Production and Trade regarding the promotion, respect and protection of ancestral indigenous knowledge in relation to genetic resources, biodiversity, technological innovation and practice. In this proposal, they ask the National Assembly to speed up the process of issuing regulations governing the Law on Biological Diversity and they establish a wide consultation mechanism by which scientific institutions interested in undertaking research in the area can obtain the necessary permission. This consultation mechanism would involve, at the national level, the Ministries of Science and Technology, Education, Culture and Sport, the Ombudsman and the Indian National Council; at state level, various regional indigenous organisations with a recognised legitimate base, environmental reserve authorities and the Regional Councils for Science and Technology and, at local level, the Community General Assemblies which, according to the proposal, represent the most valid authority to issue

this kind of authorisation, permit or other type of request for access to collectively-owned ancestral knowledge and genetic resources.

The importance of this proposal lies in the fact that, even though the law in this matter has not yet had its governing regulations established, it has generated a feeling of respect in different scientific and academic circles with regard to the opinion of the organised communities in terms of the intellectual property of their genetic resources and ancestral knowledge. Over this period of time, a number of consultations for the realisation of various projects were carried out between governmental and non-governmental bodies at national and regional level and the indigenous communities, under the careful watch of ORPIA, as the legitimately recognised grass-roots organisation in the area.

In addition, the Permanent Commission for Indigenous Peoples of the National Assembly invited the North American journalist, Patrick Tierney to speak before Parliament. In his book *Darkness in El Dorado*[3] he denounces the research sponsored by the American Atomic Energy Commission that was undertaken with the Yanomami people during the 1960s. He was accompanied by José Seripino and Alfredo Aherowe, representatives of the Yanomami people, who were in the area and declared that they knew the anthropologist Napoleón Chagnon, who was in charge of this research. It was agreed to request the National Assembly to implement concrete actions by which to repair the damage caused. It was also agreed, together with the DAI, to temporarily suspend research permits in the region of Alto Orinoco. Even so, to date the authorities responsible for these accusations have taken no steps in this respect.

Power lines to Brazil

Indigenous opposition to this project did not let up during 2001. In March, renewed clashes occurred between the army and the Pemón communities of Vista Alegre and Kamoiran, due to the establishment of new military posts in the Canaima National Park and the threatening presence of Army officials on territories occupied by the Pemón which, on 20 March, forced these communities to close the road leading to Santa Elena de Uairén. Subsequently, and on attempting to establish a dialogue with the Army on 22 March, they were attacked with tear gas and gunfire, seriously wounding one of the community's inhabitants and illegally detaining its leader, Silviano Castro. This led to urgent action on the part of the Association of Friends in Defence of the Gran Sabana, AMIGRANSA, the Venezuelan Programme of Education-Action in

120

Human Rights and other human rights, environmental and indigenous organisations with the aim of raising the awareness of all sectors of civil society in order to prevent the outrages against the original inhabitants of the Gran Sabana and to stop the deterioration of this Natural World Heritage Site.

In spite of the fierce opposition of the indigenous communities of Bolívar state to the transmission system to the south-east and despite the fact that, in February, a report of the Sub-commission of Parks of the National Assembly highlighted this project as being unconstitutional and illegal, representing economic losses for the nation and, in addition, an outrage against the indigenous communities, it was finally inaugurated. Even though the current President of the Republic, Hugo Chávez, supported the "No to the electric power line" in his electoral campaign, paradoxically, at this historic moment when the indigenous movement has gained representation in a number of public authority bodies and has had its ancestral rights recognised in the constitutional sphere, the protests of environmental groups and indigenous organisations were ignored and, finally, on 13 August 2001, the transformers began to supply energy to the north of Brazil.

Given the public resistance this has caused, the Minister for the Environment, Ana Elisa Osorio, ordered a socio-cultural impact study to be undertaken by the Central University of Venezuela. At the time of writing, this had not yet been published. It should be noted that it was undertaken without suspending the line's inauguration, and without taking the affected communities into account.

In this regard, the indigenous deputy for the ethnic groups of Bolívar, Delta Amacuro and Monagas states and President of the Indigenous Federation of Bolívar, José Luis González, who first led the opposition to the power line and then accepted an agreement with the government to paralyse action against the project in exchange for certain government commitments to those affected, clarified:

> *President Hugo Chávez gave us participation in the National Constituent Assembly and approved the indigenous chapter of the Carta Magna. But it must not be interpreted that, in exchange, we let the power line go through. This is not the case. Regardless of what has been approved or of the fact that his discourse prioritises indigenous peoples, we have to see if the demands turn into reality. We are very patient. Once more we are giving way, but we will also use this argument when the time arrives.*[4]

This agreement (see *The Indigenous World 2000-2001*) was seen as a rupture in the indigenous movement although, for González, it was no more than an opportunity to evaluate the organisation's situation and agree a temporary halt, without implying that the struggle was abandoned. What is clear is that the inauguration of the electric power line demonstrates a divide between political discourse, which prioritises the existence of indigenous peoples and communities, and the powerful national and international economic interests that finally pushed this mega-project through.

Land invasions in Amazonas state

Finally, after three years, the relocation of 200 people of the Diñaku Association has at last been achieved. In 1997, they invaded a sector of the protected zone of the Cataniapo river, territory of the indigenous Manuare and Carinagua communities, causing serious environmental damage and directly and indirectly affecting the mentioned communities and the whole population of the town of Puerto Ayacucho, the Cataniapo river being the main source of drinking water in the area. A calculation of the compensation to be paid by those responsible for this crime is currently being made, on the basis of the ecological damage incurred.

Another case is that of the Yabarana ethnic group, comprising scarcely 300 members and which, through the Yabarana of the Alto Parucito Organisation (OIYAPAM), demanded the eviction of a Spanish landowner who had been living on their territory for more than 20 years. After a long drawn-out process, the agrarian authorities passed judgement stating that this person had to leave the territory. Given that this "invader", who was given two years to leave the Manapiare municipality, has not yet done so, OIYAPAM and representatives of other ethnic groups approached the president of the National Agrarian Institute to complain about the institute's decision, taken with no consultation and at the request of the landowner, to grant him two dry seasons for the profitable sale of his cattle, a period that could cover more than 24 months, representing a betrayal of the right of the original inhabitants of these territories. At the time of writing, no decision had been taken regarding a reversal of this decision.

Yanomami Conference

For the first time, in November 2001, a general conference of the Yanomami sector was organised. This was known as the Shakita Conference as it was held in that sector of the Alto Orinoco. It arose out of a need for concrete action around the controversy caused by the publication of the book *Darkness in El Dorado* by Patrick Tierney and was organised by the Yanomami Commission and the vice-presidency of the Republic.

This meeting enabled around 700 Yanomami members, including the intermediary *shabonos*,[5] to meet and express their opinions on such important aspects as health, political participation, environment and education. Binding agreements were signed with the government authorities and non-governmental organisations attending, and whose activities have a bearing on the existence of this people, on points such as the creation of a Yanomami municipality, the granting of permits for research projects, land demarcation, access to bilingual intercultural education, the training of Yanomami teachers and implementation of the Health Plan for the Yanomami People, which forms part of the compensation agreed by the national government with the Inter-American Commission on Human Rights by virtue of the Haximú massacre in 1993.

The need to continue to investigate the Tierney accusations concerning genetic experiments on members of the Yanomami was also agreed, for which reason the text will be translated from English into Spanish. The North American journalist's invitation to speak to the National Assembly was also noted along with the temporary suspension of research permits in the region of Alto Orinoco on the part of the DAI.

Situation of displacement and violation of rights

The serious situation of the Warao, living in the states of Delta Amacuro and Monagas, has caused a huge displacement of these people towards the urban areas as a consequence of a policy of indiscriminate extraction of their natural resources and the implementation of a development model that has infringed upon their way of life, causing them to suffer dangerous health and education conditions, and impacting on their quality of life. The leaders of one community have denounced the fact that many of their brothers have died through lack of medical assistance because, through lack

of staff, there have been no medical consultations for more than three years. Illnesses causing the most deaths include tuberculosis, diarrhoea, sickness, dengue and malaria. The Permanent Commission of Indigenous Peoples and Communities drew up a report on the situation of indigenous peoples, in which it requested that the Warao people should be declared in a state of emergency. However, to date there has been no significant progress.

Another clear case of displacement is that of the Yukpa and Bari peoples of the Sierra de Perija (Zulia state) who, due to the detention of some of their members by the Colombian paramilitary during January and February 2001, have begun to move away from the border, given the lack of a security policy in these areas that takes the existence of these peoples into account. In addition, they have been hounded by the landowners and cattle ranchers of the area, who have been taking the best lands for their farms, leaving them cornered up against the foothills of the Sierra, where they suffer from a lack of water due to a drying up of the sources.

But the most serious case took place in the state of Apure during the month of July, when a Pumé family of four people was massacred by cattle owners in the area, with the aim of taking their land from them. The murderers are on trial, having openly confessed to the crime.

It is clear that, given the above, the outlook for the indigenous peoples of Venezuela seems contradictory and confusing. Peoples are now recognised as such in the legal sphere, with specific rights that should guarantee their subsistence and quality of life, and representation in the different public authority bodies but, in practice, they have suffered and continue to suffer from an absence of measures and actions that would make the constitutional and legal principles they have been recognised concrete, a situation that is reflected in the outrages they continue to suffer and in the lack of awareness on the part of the rest of the population of the respect that should be given to their ancestral ways of life.

Notes and references

1 A loose dress, usually white, worn by Guajira women. (trans. note)
2 *El Nacional*, 6 July 2001.
3 **Tierney, Patrick. 2000.** *Darkness in El Dorado.* New York: W. W. Norton & Company.
4. *El Nacional*, 19 August 2001.
5 Communal huts. (trans. note)

PERU

The first half of 2001 was characterised by the impeccable transitional government of Valentín Paniagua Corazao, a Cusco politician from the Popular Action party. After 10 years of Alberto Fujimori's government (see *The Indigenous World 2000-2001*), his subsequent flight from the country and the imprisonment of his all-powerful advisor, Vladimiro Montesinos, the Paniagua government was remarkable for re-establishing the institutions fundamental to a democratic state of law and opening up new channels for popular participation and agreement.

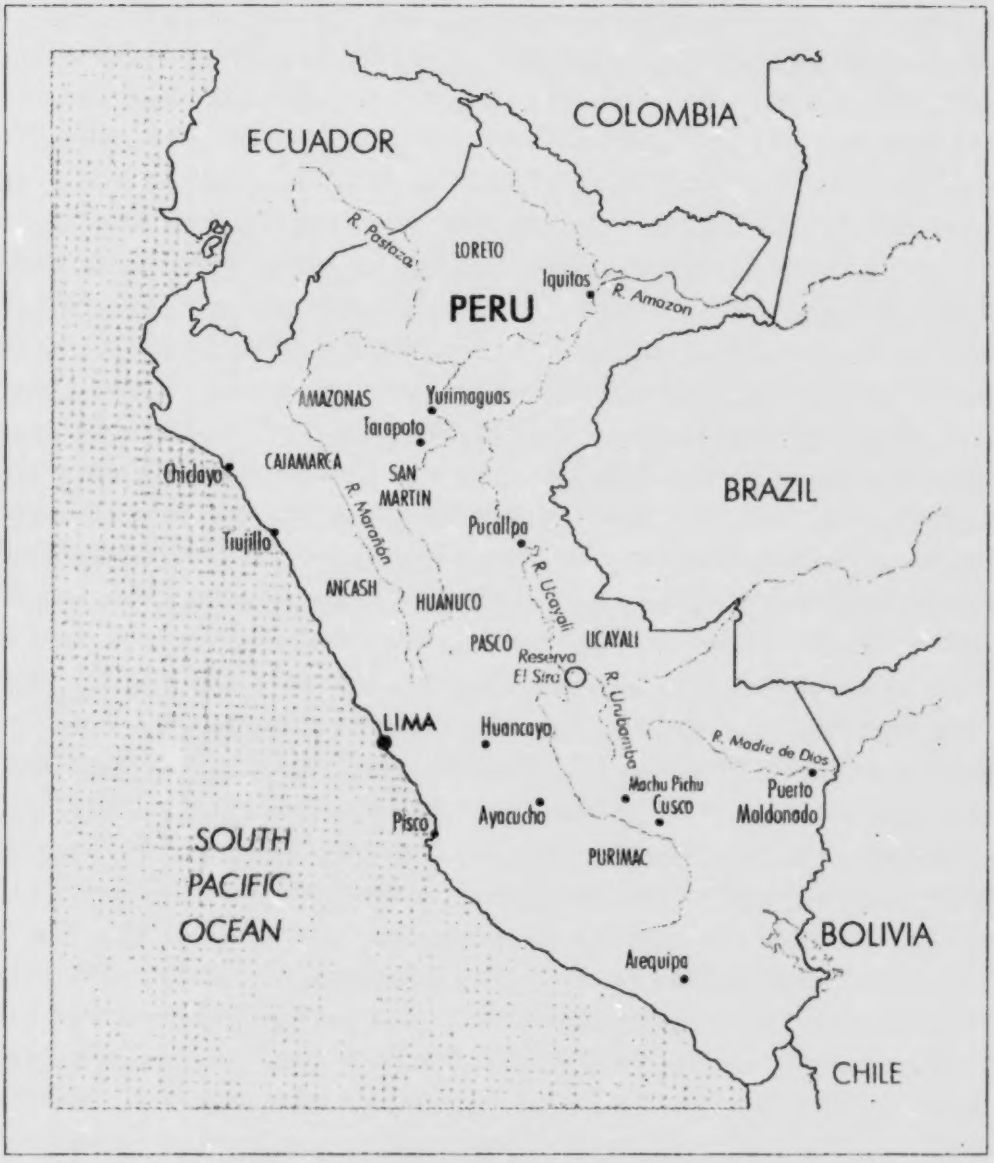
In the presidential elections of June 2001, Alejandro Toledo Manrique, won at the second round. Toledo is indigenous, from the Andean village of Cabana in the department of Ancash. Apart from being an anthropologist and very knowledgeable about Andean culture, his wife, Eliane Karp, who is half-Belgian/half-French, also speaks Quechua and has shown a strong personal vocation to work on indigenous and cultural issues.

The beginnings of a fruitful dialogue between the state and indigenous peoples

In early February, a representative delegation of the indigenous peoples of the central forest, organised by the Regional Association of Indigenous Peoples, ARPI, explained the serious situation of vulnerability being suffered by the Amazonian indigenous peoples to President Valentín Paniagua and made a number of requests.

On the basis of this initiative, the Special Multisectoral Commission for Native Communities and the Committee for Dialogue and Cooperation for Native Communities were created. The regional indigenous organisations affiliated to the Inter-ethnic Association for Development of the Peruvian Forest, AIDESEP, decided to form the National Indigenous Commission of the Amazon (CINA) in order to facilitate the dialogue process.

The process implemented on the basis of this experience has been extremely valuable, unprecedented even, in that it has enabled productive joint work to be undertaken between the state, NGOs and indigenous organisations. Its most significant result has been the Action Plan for priority issues, the first public policy document for the indigenous peoples that we know of in Peru. One



of the real achievements of the work was the official creation of the El Sira Communal Reserve, an important forested area of 616,413 has situated in the departments of Huánuco, Pasco and Ucayali, and renowned for housing a great biological wealth and diversity. This reserve will contribute to the survival and development of the Asháninka, Yanesha, Ashéninka and Shipibo peoples, to name but a few.

In the provisions creating the Reserve, the state recognises and protects the traditional access right that the Amazonian indigenous communities have always had in this area for their subsistence activities and its promulgation is "to ensure their development in harmony with their social and cultural values". In addition to the Sira

BEST COPY AVAILABLE

Reserve, another secondary achievement has been the promulgation of the regulations governing the Law of Protected Natural Areas, which includes a special system for communal reserves.

On 24 July, the Special Multisectoral Commission for Native Communities publicly presented the Action Plan for the Priority Issues of Native Communities. This plan contains specific actions benefiting indigenous peoples, and which were agreed jointly between the state and civil society through the Committee for Dialogue and Cooperation for Native Communities. The Action Plan contains government actions aimed at fulfilling eight broad priority objectives defined in the decree creating it:

1. To guarantee property rights to land and the legal security of the native communities of the Amazon.
2. To extend bilingual intercultural education to all native communities and at all levels: primary, secondary and higher.
3. To build an intercultural health system and extend public health coverage in the native communities.
4. To build conditions of peace and security for the native communities of the central forest.
5. To guarantee indigenous participation in the management of, and benefits from, protected natural areas.
6. To guarantee the access, use and participation in benefits of native communities in the sustainable exploitation of the natural resources of their environment and the prevention of negative environmental and social damage.
7. To protect the indigenous peoples in voluntary isolation.
8. To respect and protect the collective knowledge of indigenous peoples.

In order to ensure continuity in the dialogue and, given the lack of time in which to complete the Action Plan for long-term (and non-priority) issues, President Valentín Paniagua issued Supreme Decree 072-2001-PCM by means of which the Permanent Committee for Dialogue was created in order to consider the problems of the Indigenous Communities of the Peruvian Amazon. However, as of April 2002, after 9 months of Alejandro Toledo's government, this committee has yet to sit.

Peruvian government "Of all Bloods" possible?

On 28 July, Alejandro Toledo took power, with the slogan: for a government "Of all Bloods", an allusion to an emblematic work by the

indigenous author, José María Arguedas.[1] On 29 July, Toledo made known the Machu Picchu Declaration on Democracy, the Rights of Indigenous Peoples and the Fight against Poverty, signed by the heads of state of the Andean countries (Bolivia, Ecuador, Colombia, Peru and Venezuela) during the symbolic acceptance of presidential office held in the Machu Picchu citadel.

The said declaration establishes a commitment to promote and protect the fundamental rights and freedoms of the indigenous peoples favouring, in this respect, the formulation and approval of the OAS American Declaration on the Rights of Indigenous Peoples, along with the creation of a Working Group on the Rights of Indigenous Peoples within the context of the Andean Community of Nations.

For its part, in August, the Indigenous Commission of the Amazon, presided over by the Asháninka leader, Guillermo Ñaco Rosas, organised an international consultation and submitted to the government an Institutional Model for the Indigenous Peoples of Peru, which had been debated and developed in a Workshop with the leaders form various regions of AIDESEP.

However, they had to wait until December for a government reaction. On 6 December, the National Commission for Andean and Amazonian Peoples (CONAPAA) was established, presided over by Eliane Karp de Toledo. This body, created by Supreme Decree 111-2001-PCM, presents serious weaknesses in its design and shows that the government has either not taken on board, or has rejected, the institutional set-up suggested by the indigenous sector and has opted for discretional and personal management of the issues by Eliane Karp. CONAPAA, made up of 17 and then 21 honorary members, is aimed not only at "promoting, coordinating, leading, implementing" but also at "supervising and evaluating policies, programmes and projects" of concern to indigenous peoples. This concentration of consultative and implementational functions is excessive and hinders the development of a solid and effective institution, capable of designing and applying medium and long-term multi-sectoral policies.

Toledo described the creation of this working group as an historic act and added that the programmes proposed would be developed in accord with the Andean and Amazonian communities. However, as of mid-April 2002, CONAPAA had still not formally held a second working session of all its members and nor had the Committee for Permanent Dialogue, decreed by the previous government, been established.

Other indigenous progress in coordination

In October, the Native Federation of Madre de Dios (FENAMAD) drew up a management model agreed between the small logging companies of Tahuamanu and Tambopata and the state, on the basis of strategic agreements for the sustainable development of the department of Madre de Dios. Included among these are the establishment and demarcation of forests for permanent production on behalf of the small forest extractors, and the implementation of a supervisory system shared between the National Institute for Natural Resources (INRENA), the National Police, the associations of small forestry companies and the population of the area. It was also agreed to speed up the Verification Study for territorial demarcation presented by FENAMAD on behalf of the indigenous peoples in voluntary isolation in the department.

From 30 October to 1 November, in the north of the Amazon, representatives of the Shuar, Awajun and Wampi peoples of Peru and Ecuador held their Third Binational Meeting in the community of Chapiza, Peru. During this event, decisions on sustainable economic development and trade integration were adopted, along with decisions on bilingual education and intercultural health, and the Permanent Binational Technical Council was formed.

They also agreed to request identity cards or safe-conduct cards to enable free movement over the border so that members of the Awajun, Shuar and Wampi peoples could visit their families without difficulty and to promote indigenous participation in all binational development projects being implemented on their behalf and on their territories.

Another important area of progress worth mentioning is that of indigenous women's participation. For the first time, in 2001, AIDESEP established an Indigenous Women's Desk. Albeit with insufficient funds, workshops were held in five of the six regional offices, evaluating and training from a gender perspective. The response and interest from indigenous women has been huge and demanding and they have requested that the work that has been initiated should soon be followed-up. In addition to the workshops, the Women's Secretary participated in various national and international events representing Amazonian indigenous women.

Mining contamination leaves the country's communities in an emergency

We get up at 4 in the morning to graze our animals and the smoke from the Doe Run chimneys is everywhere. It chokes you, it stings

your throat. I have come to complain because our rams are dying, soon we will be left with no animals. Our cuycitos [2] are also dying.

Before, when they were ill we took them to the vet for treatment and they recovered and got fatter, now no. Since the Doe Run company has been churning out its arsenic and lead-filled smoke, they are worse. Three years ago I had 30 cows, now I only have one. How will I send my children to school? What will we live on? We live on meat, on wool that we sell. Now our animals' hair is falling out, their meat is contaminated with metals...they are dying there where we graze them.

This is the lament of Antonia Segura López, a community member from Huari, and one of the few farmers who managed to show his animals at the Second Exhibition of animals affected by Metal Ore Mining contamination held on Sunday 11 November in the town of Yauli-La Oroya.

Similarly, on 23 and 24 November, in Pasco, the Second International Summit of Communities and Populations of Peru affected by Mining took place, at which more than 600 delegates requested that the government declare a national state of environmental emergency because mining activity was seriously endangering human health through contamination of pastures, rivers, lakes and lagoons, damage to animals, crops and, in addition, a consequent move from the lands, impoverishing the communities living around the mining deposits.

The Summit was organised by the National Coordinating Body of Communities Affected by Mining (CONACAMI) with the participation of delegates from ECUARUNARI (Ecuador) and CONAMAQ (Bolivia). The event, named "Godofredo García Baca and martyrs in the struggle against environmental contamination" had the slogan of "Clean Air, Land and Water" and the Pasco Declaration was signed during this summit.

Hydrocarbons and indigenous territories: the government's Achilles' heel

In addition, in the north-eastern region of the country, the Otorongo Centre for Holistic Ecology denounced the fact that more than 220,000 inhabitants, including populations from the towns of Tarapoto and Lamas and 27 titled indigenous communities, would be affected by the oil exploration due to be carried out on plot 87 by Perupetro and the Advantage Resources, Selva LLC (Burlington) company, the concession to which has been granted without consultation of the affected populations.

Plot 87 comprises an area of 753,412 has., of which 70% is primary Amazonian forest. It falls within the provinces of San Martín, Lamas, Picota and Moyobamba, in the department of San Martín, and the provinces of Alto Amazonas and Ucayali, in the department of Loreto. The plot's area includes three linguistic families: the Quechua family of the Chachapoyas-Lamas group; the Cahuapana family of the Chayahuita ethnic group and the Jíbaro family of the Aguaruna ethnic group, with a total of 27 titled indigenous communities.

For its part, AIDESEP decided in December to suspend its participation in the national tripartite dialogue on hydrocarbons until the government of Alejandro Toledo and the Commission for Andean and Amazonian Peoples could guarantee equity, transparency and respect for the indigenous organisations.

In spite of AIDESEP's attitude, on 8 February of this year, the Ministry for Energy and Mines (MEM) distributed Draft Consultative Regulations governing Hydrocarbon Activity on the Lands of Peasant Communities, Native Communities and Indigenous Populations for public consultation. This draft severely mutilates the indigenous proposal for regulating hydrocarbon activities on indigenous territories. The text is accompanied by an Explanatory Report in which "legal and practical" arguments are put forward by the National Mining and Oil Company and Perupetro, which have led to the MEM's decision to eliminate the term "indigenous peoples", among other cuts to the original proposal.

In spite of the fact that AIDESEP, the Ombudsman and the Technical Office for Indigenous Affairs (SETAI) fully supported the principles set out in AIDESEP's draft, the DGH (Dirección General de Hidrocarburos) maintained its position in favour of the companies and to the detriment of indigenous rights. The Explanatory Report also provided information as to why all sections relating to compensation, indemnity and economic benefits (to be found in AIDESEP's initial proposal) had been removed from the Regulations.

Violence and death in Los Naranjos, Cajamarca

The year 2002 began tragically. Early in the morning of Thursday 17 January, a clash between settlers and indigenous Aguaruna from the Naranjos Native Community, in the province of San Ignacio, department of Cajamarca, left 15 settlers dead. The national press highlighted the bloody event in the crime sections but did not go into the events that led to this tragedy nor did they note the public responsibility in this.

The Ombudsman and committees from the Congress of the Republic and government later confirmed that the settlers were living illegally on the indigenous community's titled lands and that the judicial and police authorities had given up trying to remove them after various attempts had been frustrated.

For its part, the Ministry of Agriculture recently decided to declare an old claim of the Naranjos Community legitimate and to cancel the Sub-regional Resolution that granted, in 1997, on behalf of the President of the Republic, one hundred and sixteen property titles on their titled lands.

Important revelations regarding the Camisea Project

On 22 February, the environmental specialist, Patricia Caffrey (USA), presented the preliminary observations of the technical team that has undertaken an Independent Review of the Environmental Impact Studies on the Camisea Gas Project in the Urubamba Valley and Vilcabamba mountain range.

It highlighted, firstly, that the said project did not comply with World Bank standards and international practice, as these prohibit the degradation and conversion of primary tropical forest and critical habitats and do not permit adverse effects upon indigenous peoples and communities, including very vulnerable groups in voluntary isolation.

The rights of the indigenous communities were not being respected due to an insufficient consultation period and process, there was an unfair "negotiation" process, inadequate compensation proposals and it was very likely that the communities would end up in an even worse state due to the Project.

Caffrey recommended that changes be made to the management plans in order to strengthen the measures mitigating direct impacts such as contamination and erosion. The fertile layer of the moist tropical forest of Urubamba is very thin and, once extracted, it would be difficult to reforest, even worse if the rain were to wash away the fertile top soil. She also suggested adopting measures for induced impacts, such as control of access and the accumulative impacts of the project.

Progress and counter progress in the affirmation of indigenous rights

In March of this year, Eliane Karp de Toledo, President of the National Commission for Andean and Amazonian Peoples, presented a pro-

posal for constitutional reform to the Congress of the Republic in order to incorporate a range of indigenous rights.

The proposal, drawn up during a meeting on indigenous rights with the support of indigenous specialists and organisations, proposes recognition of collective rights such as ownership of territories, control over natural resources, promotion of economic development, justice administration, etc.

However, Congress unfortunately failed to incorporate these issues into the official version of the draft Constitutional Reform, and this has caused understandable uncertainty and unease within the National Commission, which hopes the error will be rectified.

But one factor in particular that continues to cause unease is the disregard for indigenous peoples in situations of initial contact or in voluntary isolation, who are ridden roughshod over by unscrupulous agents, either illegal loggers or companies with concessions from Camisea Gas and other new plots that will be put up for public auction in May this year on their territories.

One example of the sacrifices these people in extreme situations of vulnerability are forced to make is the case of the Santa Rosa de Serjali community, belonging to the Yora (Nahua) people who are in a situation of initial contact. After ten months of determined struggle, and with the continued support of the Shinai Serjali Group and AIDESEP, they managed to get INRENA to return to them part of the recovered timber that had been extracted illegally by loggers from Sepahua in the State Reserve, on behalf of nomadic Nahua Kugapakori groups, located in the forests of Urubamba, Cuzco.

Due to the desperate situation in which they found themselves as a result of the depredation of their resources, the shortage of animals and the disruption to their way of life caused by the loggers, the cacique José Dishpopidiwa Waxe and Mario Huidiba, President of the Community, made dangerous and gruelling journeys to Puerto Maldonado (Madre de Dios) and Lima, to call upon the support of FENAMAD and to explain their problems to the appropriate authorities. During one of these visits to Lima, the interpreter, an indigenous Yaminahua, died. He was the community's only contact with the outside world as he spoke the Yora's language as well as Spanish.

Given their scant contact with the national community, the Yora (Nahua) people do not have the cultural resources with which to defend their rights as they only speak their own language and are almost completely unaware of the national organisations and legal framework. In the long, complex and sometimes disheartening process of recovering their illegally extracted wood, they were able to

prove the niggardliness and virtually complicit neglect of INRENA staff in the illegal trafficking of timber.

The Yora are now faced with pressure from Plus Petrol, Hunt Oil and others who, under the auspices of the current government and with the backing of large financial and hydrocarbon institutions, are hoping to get their claws into new plots adjacent to Camisea. It would seem that these powerful interests, which act to satisfy their own energy market needs, do not care that the extraction of non-renewable resources lying under indigenous territories may mean the destruction of the tropical forests and the misfortune and death of peoples who have lived there since time immemorial and who, without them, cannot survive.

Notes and references

1 **Arguedas, José María. 1964**. *Todas las Sangres*. Buenos Aires: Editorial Losada, S.A.
2 *Cuy, cuyto*: guinea pigs. (editor's note)

BOLIVIA

The great weaknesses being exhibited by the Bolivian state and the lack of application of the most basic rights for peasant farmers and indigenous peoples with regard to land and natural resources have been the focus of tension for several years now. Aware that this weakness is caused by deep structural difficulties that cannot be resolved through momentary agreements or fleeting regulations, the representative indigenous organisations began some time ago to demand reforms of a structural nature.

Peasant mobilisations

In addition to demanding changes to agrarian legislation in terms of restricting the land markets, guaranteeing the exclusive provision of state-declared lands to peasant farmers and indigenous peoples and

131

making the procedure for regularisation of land titles (*saneamiento agrario*) more transparent and speedy, the peasant farmer march "For life and sovereignty", which began on 9 April 2001 in Cochabamba, heading for La Paz, requested the return to the national domain of strategic sectors of the economy (hydrocarbons, telecommunications, energy, transport) alienated during the privatisation process (*capitalización*) that started in the latter part of the 1980s. Given the need to embark upon structural transformations of the state and Bolivian society, which is affected by a generalised crisis, it proposed the organisation of a Popular Constituent Assembly to agree amendments to the political constitution of the state.

The April march was primarily organised by the Coordinating Body for the Defence of Water, which groups together the sectors involved directly in the defence of water resources and which took shape in April 2000 in the context of the "water war" (see *The Indigenous World 2000-2001*), and the peasant coca producers from the tropical lowlands of Cochabamba. It had been hoped that the march would be strengthened through the involvement of urban and rural sectors but this was not to be. The army interceded 12 times in the march which, amidst a complete press silence, managed to arrive in La Paz on 23 April where it found itself isolated, its demands not even considered by the government authorities who left them to be handled by working committees that stretched on over time providing no positive results.

The following July the peasant farmer sector, which comprises mainly Aymara from the altiplano, blockaded the roads in La Paz, achieving great national impact. Unlike the previous demonstration, their demands were limited to requesting fulfilment of the commitments made by the government to this sector, in particular the concession of 10,000 tractors for small agricultural and livestock producers and the granting of credit to an amount of 8 million dollars. This new demonstration also fell victim to military repression and political isolation and achieved no concrete results.

Both events ratified the capacity for mobilisation that the coca farmers of the tropical lowlands of the department of Cochabamba and the indigenous Aymara of the department of La Paz have. But, in contrast to this capacity, the events also demonstrated a lack of coordination on the part of the social sectors and a scant willingness on the part of the state to deal with social demands.

The fight against poverty versus indigenous and peasant farmer demands

Internationally, the Bolivian government was publicising its poverty reduction strategy, the product of a supposed process of national agreement known as "social dialogue", which was undertaken with representatives of the Municipal Councils and Watchdog Committees.

The strategy emerging from this "dialogue" was focused on strengthening municipal government budgets, particularly the poorest of the country's municipalities, with funding equivalent to the sum of the external debt cancelled by some countries and multilateral organisa-

BEST COPY AVAILABLE

tions. This was to be invested in social programmes over a 15-year period. The funding (1,600 million dollars, equivalent to 40% of the total amount allocated to municipalities by the National Treasury), although significant, is still insufficient to reverse the situation of poverty in a country which is second only to Honduras in terms of poverty in Latin America. According to the UN index of Unsatisfied Basic Needs, 59% of Bolivia's population live in poverty and 24% in extreme poverty. In rural areas, where more than 50% of the total population of the country (mainly indigenous and native peoples) still live, the poverty rate exceeds 90% and extreme poverty 60%.

The struggle for land and territory in the lowlands and highlands

In this context, the indigenous issue remained relegated to the second level and did not form an effective part of the official agenda. However, from the second half of 2001 on, the struggle for land and territory was concentrated in the lowlands. Tension and conflict has grown because, in addition to being time-wasting, bureaucratic and complex, the process of regularisation of land titles - through the regularisation process entrusted by law to the National Institute for Agrarian Reform (INRA) - suffers from innumerable irregularities in its application, leading to scant results in terms of indigenous and peasant access to land and territory.

The slowness of land regularisation is demonstrated by the fact that, of the 103 million hectares of rural lands that were to be regularised over a ten-year period commencing 18 October 1996 (the date of promulgation of the Agrarian Law), over five years on, only 10 million hectares have been dealt with, of which the titling of land and territory to indigenous groups and peasant farmers has been minimal.

The indigenous peoples of the lowlands have demanded the titling of 52 territories covering a total area of 24.4 million hectares but, as of April 2002, only 2.05 million hectares have been consolidated, in other words, less than 10% of that claimed. The indigenous peoples of the highlands, for their part, have presented 39 territorial demands for an area of 9 million hectares, of which they have only managed to obtain title to 12,000 hectares, corresponding to the Sicoya *ayllu* (community) located in the department of Potosí.

Although the indigenous peoples of the highlands became involved in the agrarian process later than those of the lowlands, given that their most longstanding demand (Nor Lípez in the department de Potosí) dates from 1998, there are no great conflicts involved in their titling as there are few people living within the areas of their

Information workshop on land regularisation in a Sirionó community. Photo: CIDDEBENI

territorial demands and these are limited to native settlers themselves who have opted for individual titles. Moreover, there is abundant information on the *ayllus* of the west and their location and so there is no justification for further technical studies. The greatest problems refer more to border conflicts with the jurisdiction of municipal sections since the logic of spatial occupation of indigenous peoples differs from the country's politico-administrative division.

All in all, the handling of these demands could be far easier and less costly as it is sufficient to specify the geographic location of the territorial demand and then proceed to demarcate and title it, without entering into the complicated procedure being applied in the lowlands.

One thing that cannot be resolved through the regularisation and titling procedure is the quality of lands of the highland indigenous people for, in the majority of cases, they are highly eroded and unproductive lands. According to the technical studies undertaken by the Agrarian Department, more than 80% of all degraded lands in the country (22.8 million has.) are to be found in the highlands, a large part of them precisely in the areas demanded as indigenous territories by the native peoples of the west, which thus means that minimal areas will be available for agricultural and livestock farming. These levels of degradation have been caused by mining activity, predominant in the region over the last two decades, and by the excessive

division of indigenous property that took place during the Agrarian Reform, which has led to an over-use and saturation of the land.

The agrarian process in Bolivia on the verge of exhaustion

The current agrarian process in Bolivia is losing legitimacy and is on the verge of exhaustion. What originally represented great national hope and deep international commitment seems to have deflated in the face of the state's actions in recognising the territorial rights of indigenous peoples.

Proof of this lies in the fact that the eight indigenous territories (2.8 million hectares) which, by virtue of commitments made following the "March for Territory and Dignity" of the indigenous peoples of the department of Beni (country's southern Amazon region), were recognised by supreme decree between 1990 and 1992 still have hundreds of cattle farmers, loggers, miners and oil companies controlling the lands and the natural resources existing within them. The government decrees of that time were no more than demagogic declarations, and the indigenous territorial rights only provisional and incipient. The situation of other indigenous territorial claims is no different. Power groups are not prepared to "grant" recognition of territorial rights to the indigenous peoples, whilst the state, whose strategic bodies are controlled by these same groups, is not prepared to stand up to them, not even from the logic of liquidating the large unproductive estates (*latifundios*) and encouraging the modernisation of agriculture in line with the demands of the current free market model, and so far less in order to defend indigenous rights.

The movement of the landless

The current failure of the new agrarian process has resulted in the emergence of the landless movement, made up of peasant farmers, indigenous people and migrants who, displaced from the productive apparatus, lack lands and opportunities with which to survive in conditions of human dignity.

The state authorities say it is inexplicable how any landless people can exist in Bolivia, a country covering 109 million hectares and with a population of only 8 million inhabitants. By this reckoning, every Bolivian should own, on average, 13 hectares. However, there are peasant farmers and indigenous people who have not even the most minimal piece of land because, and the state knows this, the land is

excessively concentrated. The medium and large-sized businessmen hog 8 times more land than the indigenous and peasant farmer communities, despite representing only 1% of the total number of agricultural and livestock units. But the medium and large-sized owners not only hold a concentration of land. They have also hogged agricultural and livestock credit and its subsequent writing-off, subsidies and all other advantages, without generating productivity, employment, development or well-being. On the contrary, a good part of them have devoted themselves to encouraging capital speculation, trafficking in lands and indigenous exploitation through debt bondage.

The transformation of this concentrated structure of land and exploitative system of debt bondage is an implicit objective of the agrarian process, which should penalise illegality, return abandoned lands and enable access to the land on the part of those who have little or none. But none of this has been achieved. It is part of the strategy of the power groups to prevent access to land on the part of peasant farmers and indigenous peoples and so not only do they resort to the legal means provided by the procedure itself to delay and bureaucratise the process, and to the Courts of Justice (which represent them and decide in their favour) but they also carry out acts of violence against the indigenous peoples and the organisations supporting them.

Violence as a means of preventing the titling of indigenous lands

Given the meagre progress being made in the regularisation of indigenous lands, violence began to be witnessed in August 2001 when the indigenous people of the Chiquitano territory in Monte Verde publicly complained of the onslaught of illegal persons onto their territory who, in less than 15 days, had cleared more than 400 hectares of forest. The communities re-established the control posts that had previously been set up in 1998 to prevent invasions, and the Forestry Department (*Superintendencia*)began inspections to punish those responsible for the illegal clearing. The Department's commission was intercepted by the supposed owners and threatened at gunpoint to withdraw from the area. The community members at the control posts were also threatened. The aggression reached its peak on 15 September in the municipality of San Javier, department of Santa Cruz, when a group of cattle ranchers and armed persons kidnapped and brutally assaulted a lawyer from the Centre for Legal Studies and Social Research (CEJIS), legal advisor to the Coordinating Body of Ethnic Peo-

ples of Santa Cruz and, in this capacity, responsible for legal support of the demand for titling of the indigenous Chiquitano territory in Monte Verde.

The reason behind such aggression lies in the strong defence the indigenous communities have mounted in order to avoid a number of frauds noted during individual titling procedures from being consolidated. These procedures were based on a Constitutional Court decision that deliberately tried to deny INRA's competence to declare the fraudulent documents invalid.

In the case of land conflicts in the eastern part of the country , the new government (which had already unleashed significant repressive actions against the coca farmers in the Cochabamba lowlands) chose to satisfy the demands of the agricultural and livestock professional associations.

On 27 September, the government signed an Agreement with the Agricultural and Livestock Chamber of the East and the Santa Cruz Pro-Civic Committee, in which it gave the government's word that it would grant full legal security to the "businessmen's" properties which, being found within protected areas, must have been illegally granted in settler areas or during the de facto regime of General Luis García Meza (now imprisoned in a maximum security prison for crimes including drugs trafficking, crimes against humanity and land trafficking). It was during his regime that the worst cases of corruption in terms of the distribution of agrarian property in the east of Bolivia occurred. At the same time, it promised the use of public force against the peasant farmers occupying areas of reserve land and against any intervention on the part of institutions supporting the indigenous and peasant groups.

Some days later, the government signed a Pre-Agreement Act with the *barraqueros* (rubber and Brazil nut producers) of the north Amazon, with a view to consolidating the structure of the region's large estates in favour of 300 members of the Association of Rubber and Almond Producers (ASPROGOAL) and to the detriment of the 70,000 indigenous and peasant farmers of the region.

It was then that, under the auspices of the Civic Committees (which offered to defend the department's lands from the landless peasants by force), the violence extended to other areas of the lowlands. There was a deployment of paramilitary groups organised by the cattle farming sectors and large landowners and they began to attack peasant lands in the Ichilo province, supposedly located in an area of forest reserve. In reality, the peasant farmers are settled outside of the Reserve area, their titled land having been taken over by a private owner.

Moreover, the reserve is controlled by four landowners (including the then Minister of Justice), six timber companies and three oil companies. The attacks then continued in Canandoa, a settlement located 35 kms. from Santa Cruz, where thirty armed persons attacked peasant farmers, set fire to their houses, burnt one child and evicted them from the area with the aim of leaving the place clear for a soya business to move in.

The most serious act, however, took place in the early hours of 9 November, on the estate known as Pananty, located in the Gran Chaco Province, Tarija department, 6 kms. from Yacuiba. That day, the country awoke to the grave news that 40 hired assassins had massacred peasants from the Landless Movement. Six died riddled with bullets, and another 23 were wounded, some of them seriously. One of them died two days later in the Yacuiba Hospital. It was the "Pananty massacre" that finally brought people back to reality, revealing the Bolivian agrarian process for the fiction it was.

The acts of violence then extended to the country's southern Amazon. On 29 November, the main indigenous leaders of the Baures people were kidnapped by locals working for the cattle farmers, forcing them to sign away half of their territorial demand. As it could do nothing else, a day later INRA issued a resolution by means of which it withdrew the area signed over under duress from the indigenous claim.

Change of government and the fight against drug trafficking as a smoke screen

During the second half of 2001, there was a change of government. President Hugo Banzer was suffering from an incurable illness and so he was substituted by vice-president Jorge Quiroga who, at the same time, changed more than half of the ministerial cabinet. It was hoped that the new leaders of the state apparatus would renew efforts to agree integrated solutions with the social sectors in the face of the deep economic and social crisis affecting the country. But frustrations were great when people realised that the new government had instead chosen to apply a repressive policy by which to avert social demands, the prime victims of this being the peasant coca producers of the Cochabamba lowlands.

The so-called "Dignity Plan", supposedly aimed at controlling drugs trafficking, has as its main aim that of eradicating coca crops. Initially, the talk was of eradicating only crops that were surplus to national traditional consumption but this was then substituted for a "zero coca" strategy, in other words, the total eradication of the coca existing in the Yungas (lowlands) of the department of La Paz. An-

other component of the Dignity Plan refers to so-called "alternative development", consisting of an incentive to substitute coca with other crops, such as citrus fruits, chinchilla, skins and others.

The state resources devoted to this purpose (80 million dollars) were completely insufficient for the 40,000 peasant families that live in the region, the vast majority of them migrants from mining regions who, due to the tin crisis in the mid-1980s, opted for new survival strategies. The coca producers' organisations, for their part, argued that, firstly, such resources would not actually reach them and, secondly, that the difference in exchange values on the market would lead to a lack of economic viability for crop substitution, at equivalent demand and productivity levels, and this would lead to the failure in one way or another of the government's strategy.

But the main component of the Dignity Plan has been the repressive apparatus, with significant amounts of money destined for the army and the creation and strengthening of military barracks in the area. This has led the coca producers to mobilise. Alongside this, irregular paramilitary forces have been activated, as proved and denounced by the Ombudsman in December 2001. The explanations of the military authorities were surprising to say the least: in situations where the army cannot cope, they have to resort to "reservists". And it was even more surprising to argue this need given that, in the last two months of 2001, 14,000 troops were dispatched to the coca-producing area of the Cochabamba lowlands (to the town of Chapare), equivalent to 75% of the country's whole military force. What is perhaps not so surprising in this scenario is the balance sheet of military operations, with more than 10 peasant farmers dead, and many more wounded and tortured. Over the past few years, 57 coca-producing farmers have been killed due to the military repression in the area.

The Land Summit: a government attempt to ease tension

In the midst of growing disillusionment, conflict and violence, and at the request of the Catholic Church, the government decided to organise a Land Summit, in which all social sectors would agree on solutions to the problem of land and territory. Some representative indigenous and peasant organisations, such as the Coordinating Body of Ethnic Peoples of Santa Cruz (CPESC), the National Confederation of Ayllus and Markas of Quillasuyo (CONAMAQ) and the Movement of the Landless (MST) demanded that the government give clear signals

of its political will to find integral solutions, and that it should cancel the Agreement signed with the Agricultural and Livestock Chamber in September 2001. Although, in the event, and given various complaints about its scope, the government did not have the courage to fulfil the said Agreement, neither did it dismantle it.

The announced Land Summit, finally called the "Meeting for Land", was held on 29 November 2001. The meeting was attended by indigenous organisations from the highlands and lowlands, the Landless Movement and a large number of the peasant farmers' departmental federations. From the side of business, the Agricultural and Livestock Chamber of the East attended, along with the recently formed Confederation of Cattle Ranchers of Bolivia and its federations and departmental and regional associations, and the Forestry Chamber. For the state, the ministries of Sustainable Development, Agriculture, Peasant Farmer and Indigenous Affairs and Justice were present, along with the Agrarian and Forestry Superintendents, the National Director and departmental directors of INRA, the presidents of the Chambers of Deputies and Senators and the members of the National Agrarian Court. In addition, representatives from the church attended, plus institutions involved in the land issue and international cooperation agencies.

The different sectors presented their views on the issue but, leaving no time for debate, the meeting was brought to a close by the President of the Republic. The speeches made were neither summarised nor systematised and the government later proposed to follow-up the meeting with regional events.

In spite of the meeting, actions against peasant farmers continued. Peasant leaders in the areas of conflict and survivors of the Pananty massacre were arrested for acts of violence. On 31 December, the National Board of INRA issued an Administrative Resolution modifying the technical requirements applicable to the processes of regularisation of lands, making the requirements for agribusiness lands and the medium-sized unproductive properties more flexible.

This highlighted the fact that not only was there no desire for an agreed solution to the conflict but that, in addition, the Meeting for Land had been a simple mechanism by which to distract attention and encourage application of the measures agreed with the business sector. Indigenous and peasant farmer sectors made their attendance at regional meetings conditional upon the prior halting of actions being promoted by businessmen through mercenaries and on the freeing of the illegally imprisoned peasant leaders.

After much delay, at the end of February 2002, the government re-established the Meeting but the social sectors did not attend, and so

the government initiative died a death having resolved not one of the various conflicts for which it was established.

Reforms of the Political Constitution of the State

The crisis in the country, which came about long before the change in government and which, in addition to an economic and social crisis, takes the form of a deep institutional crisis and confrontation between government coalition parties and opposition parties, led to the intervention of the Catholic Church in the search for a party political consensus. In June 2001, an Act of Understanding was signed by which the political parties made commitments regarding actions to overcome the crisis. In addition to changing the composition of the Electoral Court, the approval of a reform of the Political Constitution of the State aimed at broadening civil and political rights was also agreed, with the aim of channelling social protest. The recently installed government formed a committee of civic "dignitaries" – the People's Council – with the mandate of formulating proposals for the reform, gathering the contributions of the different social sectors by holding departmental and sectoral workshops.

For their part, with the support of private institutions working with the rural sectors, the organisations embarked upon a process of analysis and internal agreement of proposals for constitutional reform, the debate of which had begun with the formal presentation of a project by President Banzer, prior to his resignation.

The first phase of this process culminated in a national meeting in the town of Vinto, Cochabamba, in August 2001. With regard to the planned constitutional reform, the organisations denounced the fact that it related to an agreement between the leaders of political parties "stained by corruption and a lack of credibility", stating that the proposed reforms sought to consolidate the neo-liberal model and that they would never agree with them even though they were being offered "some sweeteners such as the elimination of the political parties' monopoly". They stated that the native peoples and nations had their own proposals for guaranteeing their territorial rights, that concessions over natural resources should no longer be granted, that the land should be for those who work it and not for estate owners who hoard it and that food production should be protected. They denounced the fact that the People's Council was being used to cover up the reality that changes to the constitution would really be made by the heads of a few political parties and that, instead, the

reforms should be the product of a wide meeting by means of a Constituent Assembly.

The proposal presented by the People's Council

The proposal for reform from the People's Council was formally presented to the President of the Republic last November. By then, the government was in a tight spot with regard to the holding of the Land Summit and the social sectors were hounded by legal persecution and violence.

It was not until the first months of this year that the indigenous and peasant farmer sectors heard the People's Council proposals. The general criticism that has been made of the proposals relates to the fact that, in spite of including some participatory mechanisms and social rights, they have a markedly neo-liberal slant, permitting broad guarantees to foreign investors that go against the national interest, seriously affecting the possibility of indigenous and peasant farmers gaining access to territorial and agrarian property:

The agrarian system

The substitution of "primary control (*dominio originario*) of the **nation**" over agrarian lands with "primary control of the **state**" is proposed along with the elimination of the state power of distribution, regrouping and redistribution of agrarian property. Alongside this, the fundamental principle that "the land is for those who work it", the right of peasant farmers to land provision and the requirement for compliance with the economic and social function of medium and large-sized properties would be eliminated.

These amendments would mean the end of the Agrarian Reform, as the state would not intervene to guarantee lands to indigenous and peasant communities, and would allow the current concentrated land and unproductive estate structure to be consolidated. In the regularisation processes, for individuals who claimed property within indigenous lands, whether legally or illegally, the lands would automatically be consolidated in their favour leaving only the poorest and most isolated lands for the indigenous. In short, the distribution of land would remain subject, firstly, to the law of the strongest and, secondly, exclusively to the laws of the market.

In line with the demands of the development model, it is proposed to eliminate the indivisible and non-seizable nature of peasant and small-scale lands, and the state's obligation to provide a line of pro-

motional credit to the peasant farmers, leaving them forced to resort to commercial banks, providing their property as security. Given the fact that market conditions for agricultural and livestock produce are very difficult for small producers because of the lack of import barriers, it can easily be seen that the peasant farmers would soon lose their lands, unable to produce profitably on them or unable to repay the credit taken out for that purpose.

Finally, the People's Council proposes eliminating the state's role of organising settlement plans for a better distribution of land and natural resources and, instead, would only take on this responsibility in terms of the rational distribution of population. This would seriously affect the indigenous and peasant farmer communities of the highlands, where land is scarce and seriously eroded, as they cannot hope for settlement lands in the lowlands.

Natural resources

In this area the People's Council proposes elevating the Departments to constitutional level as autonomous bodies for the regulation, control and supervision of the exploitation of land, forests, water and all other natural resources. Both indigenous and peasant farmers have repeatedly protested against the system of Departments because they act in a sovereign manner, without any control, disposing of the country's natural resources. The limits established by law are constantly lowered by resolutions of the Departments and, apart from the legal system, which does not function to the benefit of the rights of the communities, there is no power of control over these institutions.

Alongside the constitutionalisation of the Departments, it would eliminate the limits on the state in terms of disposing of renewable and non-renewable natural resources and the obligation to protect and preserve them, along with placing a prohibition on the transfer or allocation of ownership of mines and hydrocarbon deposits. With these amendments, the state, through the Departments, would be able to freely dispose of all the nation's wealth, allocating it to national or foreign companies. These are the regulations that most seriously affect the indigenous and native peoples given that their territories, with their property rights still not regularised, are home to the country's greatest wealth.

Social and political rights

Although one of the main justifications for a constitutional reform, the amendments proposed by the People's Council, provide absolutely no

guarantee that the sought objectives will be fulfilled. In spite of introducing procedures for semi-direct democracy, such as legislative initiative, referenda and plebiscites, decisions emanating from such procedures nonetheless still remain dependent upon a high majority agreement in parliament and the will of the executive power. Reforms to the Political Constitution of the State were excluded from the people's initiative for legislative change and consultation. In the party political system, the parties' monopoly remains unchanged in the national sphere, which is where they control resources and economic policies.

With regard to citizens' rights, it is established that the individual's equality before the law supposes it to be a state duty to adopt measures of positive action to eliminate inequalities but specific measures are not established in favour of the social sectors traditionally marginalised from development.

And, likewise, in terms of the right of association, movement and private property, the proposal for reform results in a criminalisation of social protest, and of the intervention of organisations that undertake it, along with the resolution of land conflicts in favour of the supposed owners of lands that are claimed by indigenous and peasant farmer communities and the criminalisation of *de facto* actions for their recovery.

Indigenous and peasant farmer reaction: the March for Popular Sovereignty, Territory and Natural Resources

Following the failure of the Meeting for Land, the indigenous and peasant organisations concentrated their efforts on issues of constitutional reform. Coordination Committees held by indigenous and peasant organisations of the high and lowlands in January, February and March openly challenged the proposals of the People's Council and demanded that, for reforms to the Constitution, a Constituent Assembly should be organised in which the social sectors could participate without the mediation of the political parties.

In the face of such fierce opposition to the People's Council proposal, the political parties with greatest representation in Parliament worked to find a consensus on constitutional reform, urged by the President of the Republic to approve the Law before the general elections on 30 June 2002. In the last week of April, it was announced that there was a consensus with regard to reform, although its substance was not made known. At the same time, the Chamber of Deputies approved a draft Law on Sustainable Development. This put the indigenous and peasant organisations and environmental sectors on

the alert because it benefited the forest concession holders with a 50% reduction of the registration fee. They also found out that the government would soon be issuing a Supreme Decree amending the current regulations governing the INRA Law, introducing previously questioned rules with which to encourage the consolidation of unproductive and illegal properties, and that INRA would approve a "technical regulation" increasing the area of land per head of cattle in order to consolidate the regularisation of cattle ranches.

This news not only provoked strong denunciation from indigenous groups, peasant farmers and environmentalists. Their joint rejection of the constitutional reform and the demand for a "Constituent Assembly with the participation of all social sectors without the mediation of the political parties", the definitive filing of the draft Law on Sustainable Development and the rejection of the rules anticipated by the government and INRA, known as the "agrarian package", together with the approval of other measures for the full validity of their rights to land, territory and natural resources, were the slogan of the March for Popular Sovereignty, Territory and Natural Resources which indigenous groups, peasant farmers, settlers and the landless embarked upon on 13 May from Santa Cruz. Almost three weeks on from the beginning of this new march, and in the middle of a heated electoral debate, many social sectors throughout the country have added their voices to the demands for a Constituent Assembly.

BRAZIL

Brazil is inhabited by 216 officially recognised indigenous peoples, with an approximate population of 350,000 people speaking 180 languages. There is proof of the existence of 42 peoples in voluntary isolation who live without regular contact with the rest of society. Indigenous people represent scarcely 0.2% of the Brazilian population but play an important role in the country's political landscape.

420 indigenous lands have been demarcated, covering 87,000,000 hectares and representing 11.55% of the whole national territory. Another 130 territories are in the process of demarcation, corresponding to 17,508,334 hectares. Most of the indigenous lands are in the Amazon, and cover 20% of the area of that region.

BEST COPY AVAILABLE

VII General Assembly of COIAB

The VII General Assembly of COIAB (the Coordinating Body of Indigenous Organisations of the Brazilian Amazon) took place from 28 to 31 May 2001 in Santarém, Pará state. 147 indigenous delegates took part in the Assembly, representing 50 peoples and 38 regional organisations from the nine states of the region of Amazonía.

During the VII General Assembly, the progress of the indigenous movement of the Brazilian Amazon was evaluated, particularly in the areas of health, education, land and economic alternatives. Goals and actions for the coming years were defined and a new Executive Committee for 2001 was elected.[1]

The General Assembly decided that, for the coming three years, COIAB should prioritise, amongst other things:

- Internal organisation, administration and resource management;
- Coordination with grass-roots organisations;
- The demarcation of indigenous territories;
- The implementation of differentiated indigenous health and school education systems;
- Support to indigenous rights at national and international level, including the Statute of Indigenous Peoples.

The VII General Assembly of COIAB also decided to create the Centre for Production and Culture of the Indigenous Peoples of the Amazon with the aim of "improving the living conditions of the indigenous peoples of the Brazilian Amazon and protecting their natural heritage, spreading their socio-economic and cultural alternatives to society in general". It was also decided to create a women's department which, together with the indigenous women's organisations already in existence, would encourage the promotion of the rights and interests of women and support their coordination at regional level in order to undertake subsequent interventions at national and international level.

The VII General Assembly also decided to establish COIAB representation in Brasilia, the federal capital, given that this city is the political centre of the country, where decisions that impact directly on the lives of the indigenous communities are taken.

The office was established in October 2001 and has a team of two leaders, a lawyer, a communications advisor and a secretary.

COIAB activity in the health sector

Public indigenous health care policies were reformulated in 1999. One of the first changes was a decision to hand responsibility for administering and managing programmes related to the health of indigenous peoples over to the Ministry of Health, through the National Health Foundation-FUNDASA.

Thirty-four Special Indigenous Health Districts – DSEIS – were created with the aim of defining programmes in line with indigenous reality. The cultural, social and linguistic characteristics, along with the geographic distribution of the indigenous peoples, were taken into account when creating each district.

The federal government increased the specific annual budget devoted to indigenous health. Prior to 1999, the maximum value of this expenditure was R$ 26,000,000.00 (approximately US$10,400,000) and in 2001 it was R$ 100,000,000.00 (US$ 40 million), in addition to resources from other programmes devoted to health in general, for example, basic sanitation.

COIAB, its grassroots organisations and non-governmental organisations signed agreements with FUNDASA, by means of which they obtained funding for primary health care in the indigenous communities. Teams were hired comprising doctors, dentists, nurses, nursing auxiliaries, laboratory assistants and indigenous health workers.[2] This is improving the quality of services, and has even led to a drop in the communities' mortality rates.

COIAB also participated in the National Conference on Indigenous Health, held from 14 to 18 May 2001. The National Conference is a body made up of representatives of the indigenous peoples, public institutions providing health services to the indigenous communities and employees of the public and private institutions working in that area. The composition of the Conference is based on principles of parity, in other words: 50% indigenous and 50% non-indigenous. Its main aims are to evaluate public health policies at national level and present recommendations for their improvement. The National Conference takes place every four years, under the auspices of the Ministry of Health.

COIAB's involvement was decisive in the definition of proposals for indigenous health care in the fields of management models and health service organisations, health monitoring, strategies for the prevention and control of sexually transmissible diseases, strengthening of social control, training of indigenous health workers, development of human resources for work in different cultural backgrounds, over-

medication and traditional practices, research ethics, intellectual property and patents, production and marketing of food in the communities.

Ex-COIAB leader elected General Coordinator of COICA

The VI Congress of the Coordinating Body of Indigenous Organisations of the Amazonian Basin – COICA, held in Leticia, Colombia from 11 to 15 June 2001, elected Sebastiao Haji Machineri as its general coordinator for the period 2001/2004. Machineri held the post of COIAB's coordinator from 1994 to 1996.

BEST COPY AVAILABLE

Ninety indigenous delegates from the Amazonian countries participated in the VI Congress, along with a number of representatives from support organisations in Europe, North and South America. The COIAB delegation participating in this event comprised 15 leaders.

After outlining an assessment of indigenous reality and the work undertaken by the different indigenous organisations over the last 4 years, the VI Congress defined areas of work and proposals to respond to the challenges raised by issues such as the exploitation of natural resources on indigenous territories (oil, mining, timber etc.), climate change, biodiversity, the protection of traditional knowledge, genetic resources, regularisation of indigenous land titles, sustainable development, protected areas and indigenous territories, the UN Permanent Forum on Indigenous Issues and associations and alliances.[3]

Amazonian Indigenous Forum on Climate Change

The Amazonian Indigenous Forum on Climate Change, held from 8 to 11 October 2001 in Manaus, was organised by COIAB, in association with COICA, with support from the Amazon Alliance, GTZ (German Technical Assistance) and other institutions. The aim of the event was to analyse the problem of climate change, to discuss the measures being proposed by governments and other sectors to alleviate it and to define common policies in favour of indigenous peoples and other inhabitants of the forests.

The indigenous and local leaders present at the Forum reaffirmed the importance of village and community knowledge, and their traditional ways of life that are in harmony with the environment, protecting the biodiversity and native tropical forests. They also raised the issue that none of them had adequately participated in the discussions and decision-making on climate change and the negotiations on the Kyoto Protocol. They also regretted that the native tropical forests had not been included as an instrument for "clean development" and decided, finally, to arrive at a common denominator in an understanding of the problem of climate change and to work in search of solutions that include the village and communities' points of view.

The World Conference on Racism and indigenous peoples' rights in Brazil

Apart from its international emphasis, the World Conference on Racism served as a trigger for internal discussions on the discrimination

to which indigenous peoples and other sectors of Brazilian society are subjected. In this respect, the federal government established the "National Committee for the preparation of Brazilian participation in the World Conference on Racism", with the participation of representatives from public bodies and civil society, including indigenous peoples.

The Committee held the National Conference on Racism on 7 and 8 July in Rio de Janeiro, in order to present proposals to the Presidency of the Republic aimed at orienting Brazil's participation in the World Conference. Representatives from the Black, indigenous and disabled communities, among other different social sectors affected by racism and discrimination, participated in the National Conference. The conference approved various proposals that were sent to the Presidency of the Republic. Most of the proposals were approved by President Fernando Henrique Cardoso.

Some of the proposals approved were:

- Urgent approval by the National Congress of a new Amerindian and Indigenous Communities' Statute;
- Finalisation of the demarcation of Indigenous Lands – territorial protection and eviction of invaders;
- Restructuring of the National Amerindian Foundation;
- Approval by the Federal Government and National Congress of measures for the protection of indigenous and traditional knowledge and genetic heritage, including protection of the biodiversity;
- Organisation of a census of the indigenous population by the Federal Government;
- Ratification and implementation of international treaties guaranteeing indigenous rights, such as ILO Convention 169, the UN International Declaration on the Rights of Indigenous Peoples, and the OAS American Declaration on the Rights of Indigenous Peoples;
- Creation of a Permanent Forum on Afro-indigenous Native Rights.

The official Brazilian delegation took prominent part in the areas on indigenous peoples in the World Conference on Racism, which approved the Declaration and Programme of Action against Racism, particularly with regard to adoption of the expression "indigenous peoples".[4] Through these documents, the states recognised that the indigenous peoples are victims of racism and discrimination and highlighted the need to adopt constant measures to combat these problems.

Amerindian Statute

Draft bill of law no. 2,057/91, instituting the Statute of Indigenous Communities, has been with the National Congress since 1991.

In 2001, during events related to the World Conference on Racism held in Durban, South Africa, the federal government promised to approve the new Statute of Indigenous Peoples as a measure to combat discrimination against indigenous peoples. This commitment was included in the official Brazilian document presented to the World Conference recognising, among other things, that the current law discriminates against indigenous peoples insofar as it considers them incapable of civil acts.

Meanwhile, the bill of law remained formally paralysed in the Chamber of Deputies during 2001.

Provisional measure on access to genetic heritage

The provisional measure (MP) is a normative act of the President of the Republic that serves to govern urgent issues and is of temporary effect. When the MP comes to the end of its validity, it is possible to republish it in order to renew its effect. An MP comes into permanent effect following its conversion by the National Congress.

The Presidency of the Republic published the first version of MP no. 2,186 in June 2000, with the aim of regulating access to genetic heritage and its associated knowledge. Various sectors of Brazilian society, including NGOs, indigenous organisations and members of parliament, were against the MP because, among other things, it did not respect the discussions underway in the National Congress. The Senate, after four years of discussion, had already approved bill of law no. 306/95, the author of which is Senator Marine Silva (PT-AC), to deal with this issue, and it was now for the Chamber of Deputies to discuss it for its subsequent approval.[5]

When dealing with access to genetic heritage located on indigenous lands, in the second paragraph of article 17, the republished measure provides that the hypothesis of outstanding public interest of the Union must be regulated by a complementary law, under the terms of § 6 of article 31 of the Federal Constitution. Alterations to the republished MP demonstrate that the federal government recognises the legal validity of the request that was made in an action organised by CONTAG.

155

The MP reasonably protects indigenous interests but it needs perfecting. In this respect, the approval of a law is essential as it would be the most appropriate legal instrument to offer such protection.

The Council for the Management of Genetic Heritage

The federal government published Decree 3,945/01 governing Provisional Measure No. 2,186 of August 2001, which provides regulations on access to genetic heritage and deals with the composition and powers of the Council for the Management of Genetic Heritage. The Council will be made up of representatives of 17 federal public bodies but will not include the participation of indigenous peoples, local communities or any other sector of civil society.[6]

The decree contradicted the demands of indigenous peoples and organisations, who have been fighting for their participation in bodies dealing with their rights and interests. It also went against the discussions that were taking place within the United Nations, which recommended that the states strengthen indigenous participation in those bodies related to the management and protection of the genetic resources existing on indigenous lands and related traditional knowledge.

The indigenous organisations, together with other civil society organisations, are protesting against this government decision and continue to demand their participation in this Council.

Third grade training for indigenous teachers

In July 2001, the State University of Mato Grosso – UNEMAT – created the 3rd grade indigenous teacher-training course, on which 200 students from 35 indigenous peoples of various regions of Brazil are enrolled. The course is of great importance because it responds to the demands of the indigenous communities for indigenous teaching that is in accordance with their cultures and for indigenous teachers to be trained to take charge of the classrooms.

From 7 to 11 November 2001, a "Legal course for indigenous lawyers" was held by the Coordinating Body for the Defence of Indigenous Rights – CGDDI - of the National Amerindian Foundation – FUNAI, and the University of Brasilia – UNB, with the support of the Socio-environmental Institute – ISA. The course was held in the auditorium of the University of Brasilia and dealt with indigenous constitutional rights, specifically tackling territorial rights, biodiversity

and traditional knowledge protection, the right to health and education. Seven indigenous lawyers and seven indigenous law students attended this course.

Meeting of the *Pajés* [7]

From 4 to 6 December 2001, the "Meeting of *Pajés*. Indigenous wisdom and science and industrial property: reflection and debate" took place in São Luis, Maranhão state, in order to discuss and channel proposals on the protection of the traditional knowledge of indigenous peoples and the genetic resources existing on their lands. Twenty-two indigenous people participated in this event, including spiritual leaders, indigenous lawyers and representatives of indigenous organisations, plus guests from governmental and non-governmental organisations involved in the issue. At the end of the meeting, the "São Luís de Maranhão Charter" was approved which, among other things, states:

1. That our forests have been preserved thanks to our age-old knowledge;
2. As indigenous representatives, we are important in the discussion process on access to biodiversity and related traditional knowledge because our lands and territories contain a major part of the world's biological diversity and are of great social, cultural, spiritual and economic value;
3. That the Brazilian government should create the space for indigenous communities' representation within the Council for the Management of Genetic Heritage;
4. That the Brazilian government should establish legal regulations governing access to genetic resources and traditional and related knowledge, discussing this fully with the indigenous communities and organisations;
5. We, indigenous representatives, firmly reassert before the government and international organisations our right to participate fully in national and international decision-making spaces on biodiversity and traditional knowledge, such as the Convention on Biological Diversity (CBD), the World Intellectual Property Organisation (WIPO), the Intergovernmental Committee on Intellectual Property and other bodies;
6. We recommend that countries approve the UN Draft Declaration on the Rights of Indigenous Peoples;

7. As indigenous representatives, we affirm our opposition to all forms of patent granting that stems from the use of traditional knowledge and we request the creation of punitive mechanisms to prevent the theft of our diversity;
8. We recommend the creation of a fund financed by governments and administered by an indigenous organisation, the aim of which would be to subsidize research undertaken by community members.

The Meeting had a great impact in the national and international press. The document approved during the meeting is now the main reference work for Brazil's indigenous peoples when dealing with issues related to protection of the genetic resources existing on their territories and their traditional knowledge.

Federal Union and FUNAI ordered to compensate indigenous Panará

The Regional Federal Court of the 3rd Circuit of the Region issued its decision ordering the Federal Union and FUNAI to pay compensation to the Panará, of Pará state, for damage (humiliation and terror) and 170 deaths caused during the 1970s when they were contacted and evicted from their lands due to the construction of the Cuiaba/Santarém highway. The decision entered into force, in other words, it became irreversible, on 21 November 2001. It is unprecedented because, for the first time, the courts ordered the government to pay compensation to an indigenous community for damage caused to them.

The value of the compensation was set at approximately one million reals, and although this amount cannot repair all the damage caused by the Brazilian state, it will serve to strengthen the self-esteem of the Panará and to support the implementation of restructuring projects for the community. In addition, the decision constitutes a precedent that can be used by other indigenous people when appealing to the courts.

The Panará community lodged the claim for compensation in 1994, with the support of lawyers from ISA. At the same time, the Panará, assisted by ISA lawyers, lodged a legal action requiring recognition of their territory. In 1997, the Ministry of Justice published a decree determining the physical demarcation of the land, administratively recognising the territorial rights of the Panará. Gradually, this community is re-establishing its rights and recovering its dignity for the future.

Condemned for the massacre of indigenous Ticuna

This massacre, which took place on 28 March 1998, occurred in the municipality of Benjamín Constant, in the Alto Solimões region, close to the Brazilian border with Colombia and Peru. On the day of the massacre, representatives from the Ticuna de San Leopoldo, Novo Porto Lima, Bom Pastor and Porto Espiritual communities were surprised in an ambush when they were peacefully meeting to discuss the killing of an animal (bovine) by landowners in the area.[8]

The delay in bringing the trial was due, among other things, to a discussion as to whether consideration of the case came under federal or state competence.[9] There was also a discussion on the need for a trial by jury, the understanding prevailing in the end that it was a crime of genocide and thus fell under the competence of an ordinary magistrate.

The Ticuna people, COIAB and allied bodies undertook national and international campaigns demanding condemnation of the authors of the genocide during the course of the trial.

Reform of FUNAI

On 1 November, the Ministry of Justice approved Decree No. 1,006 creating the Working Group responsible for proposing reforms to FUNAI. FUNAI's reform is necessary for various reasons: it has scarcely 2,300 officials to deal with all the indigenous communities, its budget is insufficient, the changes in indigenist legislation and general reforms that are taking place in the sphere of the public administration necessarily require its reform and updating in order to be able to provide the public services that fall within its sphere of responsibility.

Programme of "Indigenous Citizenship in Río Negro"

In September 2001, the Federation of Indigenous Organisations in Río Negro – FOIRN, came to an agreement with the State Department for Human Rights, an organisation of the Ministry of Justice. The aim is to facilitate the access to basic documentation for indigenous people of the region who, through problems of transportation, costs in obtaining documentation and even difficulty in communicating in Portuguese, often cannot even obtain their birth certificate. According to estimates from the local authorities, approximately 5,000 indigenous people in Río Negro do not hold electoral cards and can thus not

participate in political elections. The project also aims to consider other problems restricting the exercise of indigenous citizenship and suggest solutions to resolve them.

From November to December 2001, campaigns were held in the town of San Gabriel de Cachoeira and in different communities located along the rivers of the Río Negro basin, in which 2,435 people received birth certificates, identity cards, physical registration papers, work permits and electoral cards, plus civil marriage certificates.

In line with the provisions of the project, from 21 to 25 January 2002, FOIRN, together with the Socio-environmental Institute, organised a seminar on "Indigenous Rights in the Río Negro", in which 155 representatives from 49 organisations forming part of FOIRN participated, in addition to technicians and officials from various institutions involved in this area.

The issues tackled were the demarcation of lands, documentation rights, water resource protection, the genetic resources existing on indigenous lands and traditional knowledge, support programmes for the sustainable economic development of the indigenous communities and public policies in the areas of health and education.

On the basis of the discussions, a document on factors restricting indigenous citizenship was drawn up and proposals for overcoming those factors made.[10] FOIRN decided to send a proposal to the State Department for Human Rights, highlighting the need to continue the project which, according to the Department, stands a good chance of being accepted.

FOIRN's experience, apart from meeting the needs of the Río Negro communities, will serve as a reference for the federal government and other indigenous organisations when helping other indigenous communities and even non-indigenous people from the Amazon who have similar problems.

Conclusion

The above information shows that the situation of Brazil's indigenous peoples is clearly improving. Lands are being demarcated, indigenous communities are participating in organisations dealing with their interests, the justice system is taking important decisions to protect indigenous rights, the indigenous organisations are becoming stronger and guaranteeing their own autonomy and the government is decreeing important measures that will benefit the indigenous communities.

Despite all this, it must be borne in mind that there remain many controversies to be resolved. The bill of law instituting the new Statute of Indigenous Peoples has been held up within the Chamber of Deputies since 1994; the rights of indigenous peoples are violated and, in many cases, administrative measures to re-establish them are not taken or cases are not brought before the courts; the demarcation processes for many lands are paralysed and even others that are already demarcated are being invaded by landowners and others, in addition to frequent invasions on the part of logging companies, fishermen and *"garimpeiros"* (gold prospectors). The government has announced proposals to reform indigenist policy but is not adopting consistent measures with which to take them forward.

The government continues to exclude indigenous people from participating in the bodies dealing with their interests and even in those where they do participate this is only in a consultative manner, with no legislative powers. Policies in the area of health, education and sustainable development are being implemented but still require more support for their consolidation. In addition to this, the progress made by the indigenous peoples of the Amazon has still not filtered through to other regions of the country, where there are serious land problems and where health and education, along with economic activities, are scarce and there are even difficulties in accessing clean drinking water.

The government thus needs to adopt measures to overcome these problems, such as finalising the land demarcation, evicting the non-indigenous people living illegally on indigenous lands and creating programmes of monitoring and supervision to avoid new invasions.

The federal government needs to implement the actions to which it committed during events related to the World Conference on Racism and truly promote the restructuring of FUNAI so that, together with the indigenous communities and villages, this body can have real influence.

Notes and references

1 COIAB report 2001. COIAB, March 2002.
2 Indigenous health workers are being trained to provide care in their communities.
3 Resolution nos. I and II of the VI Congress of COICA – June 2001.
4 For the indigenous peoples of Brazil, the adoption of this expression as found in the documents approved by the World Conference on Racism

signifies a step forward, as there had previously been fierce internal resistance on the part of some sectors of the government, who alleged that its use created the possibility of external interference in the sovereignty of the country. With this new step, it is hoped that Brazilian legislation will also begin to consider the Amerindians as indigenous peoples.

5 Lima, André, Socio-environmental Institute. Personal communication. June 2001.

6 Toledo, Lilia Diniz and Fernando Mathias Batista, Socio-environmental Institute. Personal communication.

7 *Pajés*: shamans. (Editor's note)

8 Toledo, Lilia Diniz and Fernando Mathias Batista. Personal communication.

9 The case reached the Supreme Federal Court– STF, the highest body of judicial power, which decided in favour of Federal Justice to hear and judge the case.

10 The main problems highlighted were related to a lack of lawyers to defend indigenous rights, the need to finalise the demarcation of lands in Río Negro and to support economic development projects, and problems of invasion of the rivers by fishermen. (Final Report of the Indigenous Citizenship Project in the Río Negro – FOIRN, March 2002)

PARAGUAY

The government's initiative to reform Law 904/81, the *Statute of Indigenous Communities*, which was announced by the Ministry for the Reform of the Presidency of the Republic on 18 October 2000, is a result of the national indigenist policy of the last 3 years and, in turn, the clearest signal of the state's attitude over this period: one of denying indigenous peoples their rights, their very existence even, giving them the least attention possible in terms of funding and policies.

Reforms to Law 904/81

Approval of the *Statute of Indigenous Communities* in 1981, which recognised the legal existence of the indigenous communities and their right to own their land, indicating a minimum restoration basis of 100

hectares per family in the Chaco and 20 in the Eastern Region, and which also recognised the validity of indigenous customary law, was an unprecedented legal milestone for its time. Moreover, the creation of the National Indigenous Institute (INDI) established, at least in theory, a body with the administrative powers to apply indigenist policy. However, this was no more than another "good" law, of limited validity in practice.

Chapter V of the subsequent National Constitution of 1992, along with Law 234/93, which ratified ILO Convention 169 "Concerning Indigenous and Tribal Peoples in Independent Countries", extended even more guarantees to the indigenous communities of Paraguay, recognising their condition as peoples, their existence prior to the Paraguayan state and their right to community ownership of areas determined not simply by an arbitrary figure but by the socio-cultural needs of their peoples (Art. 64 of the National Constitution). Nonetheless, land restoration is, in practice, governed by Law 904/81, not by constitutional criteria or by international standards.

There are a number of underlying reasons as to why President Luis González Macchi's government has proposed a draft bill "Governing the functioning of mechanisms responsible for national indigenist policy": firstly, the wider process of state reforms motivated by the shortfall in revenue that has accumulated over recent years; secondly, the greater public space now available for indigenous territorial demands, a consequence of the increasingly prominent role of indigenous communities and organisations, which have questioned, based on the legitimacy and legality of the Constitution and ILO Convention 169, the unjust distribution of lands within the country, which forms the basis of political and economic power; and, lastly, the demands of departmental governments to have greater budgets for their welfare programmes, of less economic and political cost to central government. All this can be added to the historic corruption and inefficacy of INDI. These are all undisclosed reasons and arguments as to why the government and its landowner allies have been amassing in favour of a reform of Law 904/81.

Since the draft bill was issued by the Ministry of Reform of the Presidency of the Republic, various voices have spoken out against it. Earlier in the year, the Paraguayan Episcopal Conference (CEP), the Coordinating Body of Leaders of the Bajo Chaco (CLBC), the Network of Organisations at the Service of Indigenous Peoples ("*Red Indigenista*"), the 19 April movement (M19A) and INDI itself all questioned this draft bill. The observations formally relayed to the government not only criticised the content of the bill but also the procedure by which it was drawn up, noting the fact that indigenous peoples were

neither consulted nor informed about this reform, as required of signatories to ILO Convention 169 (articles 6 and 7) when attempting to approve or change laws directly affecting indigenous peoples.

In terms of its content, for example, the draft does not recognise the indigenous people's existence prior to the Paraguayan state as does the National Constitution, a principle that forms the basis for the return of their lands, their right to self-determination and to their own identity. The bill also reduces the minimum amount of land the state is required to give each indigenous family by 50% in relation to the criteria stipulated in Law 904/81. This demonstrates an intention to

BEST COPY AVAILABLE

minimise, and/or legitimise, the shortfall in territories and lands returned to indigenous people by the state, which is currently far from satisfying the constitutional criterion of article 64.

In spite of this, and in spite of the fact that INDI itself drew up a proposal making known the criticisms of the indigenist organisations and of the Association of Indigenous Supporters (*Asociación de Parcialidades Indígenas* - API) on 30 April 2001, the government presented its controversial draft bill to the Chamber of Senators, which automatically sent it to four committees for their consideration. At the end of May, various indigenous organisations and representatives from the Chaco and the Eastern Region formed a Commission for Indigenous Self-determination in order to participate in the reforms to Law 904/81, and demanded the withdrawal of the government's draft bill and/or deferral of its consideration within Congress, along with a nation-wide indigenous consultation and a one-year period in which to organise this.

Indigenous mobilization

At the beginning of June, the API convened more than 250 indigenous representatives, who arrived in the capital and camped in front of Congress demanding greater involvement in the reform of Law 904/81. President González Macchi promised them this involvement and the API leaders agreed - with the Minister for Education and Culture and the Minister for Women - a period of 30 days in which to undertake a consultation process. This was a point of disagreement with the Commission for Self-determination and other organisations, who were demanding a one-year period for the consultation and wider participation and representation not exclusively mediated by the API. Finally, the API joined the protest to extend the period to one year, signing an agreement with the Commission for Self-determination at the time of the CLBS assembly, held at the end of July.

Two other meetings held in August in Boquerón and Alto Paraguay by members of the Commission for Self-determination ratified the above demands and agreed on the idea of organising a mass mobilisation in order to force the government to comply with them. In the Eastern Region, a number of organisations expressed their concern and claimed the need for consultation with the communities. The National Meeting of Indigenous Women, held under the auspices of the National Coordinating Body of Rural and Indigenous Women (CONAMURI), also demanded that the government provide for indigenous participation, particularly that of indigenous women, when defining policies of concern to them.

Meanwhile, 3 out of the 4 committees of the Chamber of Senators that had received the draft bill from the government were of the opinion that it should be rejected. To their concerns were added questions regarding the formulation and content of the draft bill, put to the Paraguayan state by the Inter-American Commission on Human Rights (IACHR) and the ILO.

On 11 and 12 October, in Pozo Colorado, a mobilisation of approximately 5,000 people from communities from all over the Chaco took place, organised by the Commission for Self-determination. Prior to this, a negotiating committee had met with the President of the Republic, Luis González Macchi, the Minister for Justice and Work, Silvio Ferreira, and the Governor of Boquerón, Orlando Penner. The head of state agreed to make the participation of indigenous people, both men and women, possible by means of a consultation process, arguing that the draft bill could not be withdrawn but that it could be "frozen" in Congress, and recommending a period of one month within which to undertake the consultation by means of a single national indigenous congress in Boquerón, where the indigenous proposal for the law would be approved. Other indigenous demands that were also at the root of the mobilisation were not considered at this meeting, such as payment for land claims already administratively settled.

In the end, the Commission for Self-determination prepared a proposal for consultation that envisages studying a draft law and subsequently discussing it in regional assemblies throughout the country, culminating in a national indigenous congress. Funding will be requested from the government for the assemblies and congress, which will also enable the binding nature of its results to be assured.

Indigenous territorial claims

During 2001, there was no funding available with which to pay compensation for properties that are the object of indigenous claims and, consequently, no claims have been resolved.[1]

INDI was initially allocated a budget for its minimum operational costs up until June and, following a request for extra funding that was favourably received by Parliament, it obtained additional funding with which to complete the year. The draft bill on the General Budget for National Expenditure for 2002, presented to Parliament by the government, envisages the sum of 4,049 million guaraníes for INDI (approximately US$880,000), half of what was allocated the previous year. Counterpart funds for the purchase of indigenous lands, required of the Paraguayan government as part of the plans for mitigat-

ing the socio-environmental impacts of road infrastructure projects (funded in the Eastern Region by the World Bank and in the Chaco by the Inter-American Development Bank) have so far not been budgeted for.

The Agrarian Reform Committee of the Chamber of Senators decided against the expropriation of the 158,000 hectares claimed by the population of Puerto Casado in the department of Alto Paraguay. This population includes approximately 2,000 indigenous Maskoy. This request relates to part of the one million hectares acquired by the Moon Sect in the Chaco. This decision, along with the unconvincing interventions on the part of various national authorities to secure the 158,000 hectares on which half the civilian population of the municipality are settled, questions not only the work of the government in making equal access to productive resources possible but also the validity of its legal system within its own borders.

The decision, taken last year by the above mentioned parliamentary committee and later confirmed by a plenary sitting of the Senate, to reject the expropriation requests of the Sawhoyamaxa[2] (14,404 hectares) and Xakmok Kásek communities (10,700 hectares), both belonging to the Enxet people, resulted in these communities reporting the Paraguayan state to the IACHR for the arbitrary nature of the said refusal. Following the intervention of this body, the Government requested a friendly solution to both cases and it is hoped that, by the end of the year, there will be an official proposal for these land claims. In another case, relating to the claim of the Yakye Axa community (18,179 hectares), which was submitted to the IACHR last year due to an arbitrary decision of the Supreme Court of Justice against their hunting and gathering rights on the disputed lands, the Government requested a friendly solution and, in this regard, a number of meetings between state representatives, indigenous peoples and their lawyers were held. In principle, the state recognised the lands claimed as being the community's traditional habitat but it was not possible to arrive at a satisfactory agreement because of the action of the INDI president, Olga Rojas de Báez, who defended the interests of the supposed title holders above those of the community. Finally, on 29 Aug. 2001, in an event of the most serious nature, Ramón Ángel de la Cruz Martínez Caimén, the criminal judge of the judicial district of Concepción, while considering a criminal complaint made against the community, stipulated their eviction from their roadside settlement, opposite the lands claimed, ordering implementation of this notice to be effected by INDI itself, the Ministry of the Interior and the Ministry of Public Works and Communications (MOPC). This obviously led to

the immediate withdrawal of the community and its delegated representatives from the process of finding a friendly solution, and they requested preventive measures from the IACHR to avoid their eviction.

In an unprecedented act, the IACHR declared the requested preventive measures, ordering the Paraguayan state to suspend all administrative judicial orders involving the eviction or removal of the community's dwellings. The president of the Supreme Court of Justice requested Judge Martínez to freeze the decision and petitioned MOPC and the Ministry of the Interior to act in accordance with the IACHR's requests. On this basis, a final decision is pending from the Supreme Court with regard to the continuation of the proceedings against the Yakye Axa community and the judge's decision.

Some 250 people from the Ypa'u Señorita community of the Mbya people installed themselves in Asunción on 18 April 2001 to demand implementation of an eviction notice issued against the landless peasants who had been occupying their 2,199 hectares of land since 1993. Innumerable days of protest, and negotiations with a wide range of authorities (heads of the executive, legislative and judicial powers, ministers, presidents of the IBR and of INDI) and with representatives of the peasant sector, finally culminated on 25 June in the peaceful eviction of the occupants and their relocation to other lands. The damage caused to this community's habitat and to the very physical and psycho-social integrity of its members over the years this occupation lasted is, however, largely irreversible. This conflict is the only one in which some kind of solution has been achieved. Yet there are another 10 indigenous communities in the Eastern Region with lands occupied, without any intervention ever having been undertaken on their behalf.

Violations of other rights

Another situation, related to the above, is that of the migration of men, women and children of the Mbya and Ava Guaraní peoples to the country's large urban centres, where they occupy one of the lowest levels on the scale of urban marginalisation. The causes of this migration are many: a lack of security in their native communities, a lack of subsistence alternatives and of official support, unemployment, outsiders profiting from the prostitution of children, etc. Even cultural causes are given, such as a reformulation of the *oguata*[3] culture, or respect for personal autonomy, which is also extended to the children.

Certainly, all these causes are contributory but the fact that the state has not guaranteed sufficient lands to the indigenous peoples of

the Eastern Region for their material and cultural subsistence must be considered fundamental. According to the media, INDI carried out 17 "return" operations with scant resources, during which approximately one thousand indigenous people were returned to their communities. At least two legal proceedings were implemented in order to bring this "disaster" to an end. The most striking, undertaken by the criminal prosecutor, Rafael Fernández, and the Advocate-General for Children, Cristina Arévalos, included the "rescue" of 58 indigenous boys and girls, and involved the arrest of 11 indigenous adults and even the prosecution of the president and members of INDI's council for failing to intervene. Finally, following a long journey around prisons, the boys and girls returned to their communities, the president and council of INDI were absolved and the indigenous adults freed without it having been proven that they were sexually abusing the children or that they were benefiting from their prostitution.[4] What remains clear is that there is an increasingly walked path between the indigenous communities and the cities, between marginalisation and a search for survival, and that urban marginalisation is undoubtedly more damaging to indigenous women and children.

With regard to the health situation of the indigenous peoples, a number of indicators published this year are a good illustration and thus worth mentioning: according to an official from the Pan-American Health Organisation, the number of indigenous people suffering from tuberculosis is ten times higher than the national average, and one of the highest in the world. According to official data, 80% of the indigenous population of the Chaco suffers from jiggers, and two out of every three Hanta virus sufferers recorded this year were indigenous. With regard to education, at the first Congress of Indigenous Education, a Guaraní teacher summarised the situation as follows, "there is no such thing as an indigenous education, only a Paraguayan school education within the indigenous communities". It is worth noting that the total amount spent on indigenous education is scarcely 800 million guaraníes, or approximately US$174,000.

In two cases of crimes committed within indigenous communities, the murder of a pregnant Ayoreo woman that was attributed to her husband, and the murder of Heinrich Loewen, an Enlhet from Peseempo'o, a conciliatory agreement was reached between the families of the victims and the supposed murderers, in accordance with both indigenous customary law and the new criminal procedural legislation. However, application of this legislation has been totally erratic, in some proceedings it is applied, in others not, and in some cases it is totally ignored, as in the case of the criminal proceedings against

the Yakye Axa community mentioned above. It must be noted that in a number of cases of crimes and attacks against indigenous people no progress whatsoever has been made in their investigation, such as the murder of Francisco Arce, a community member, which took place on the farm where he was working.

Conclusions and recommendations

The result of the Law 904/81 reform process - whether it supports or not the indigenous consultation and its results - will be the indicator by which to determine whether policy in the future will be, once and for all, genocidal or a progressive indigenist policy.

Given the above, we recommend supporting the indigenous consultation and recognising the binding nature of its results, with the aim of establishing an adequate indigenist policy not only in legal terms but in terms of the effective provision of institutional, financial and administrative instruments to ensure the return of indigenous territories and the validity of the rights to self-determination and to the development of indigenous peoples. While this process is being implemented, the state must use all alternative methods possible to satisfy the indigenous territorial demands and needs, as well as their demands for improvements in health, education, sustainable development from a cultural and gender perspective, access to justice etc. For this reason, all the different levels of state power must consider themselves responsible for implementing this.

Notes

1. The indigenous demands presented to the Institute for Rural Welfare (IBR) are in excess of a million hectares, to which must be added the many communities with little or no guaranteed land and which, to date, have no information or advice with which to begin a process of territorial recovery. This overall perspective indicates that, of the 500 indigenous communities – in round figures – existing in the country, 6% have little or no titled lands.
2. On the date of its anniversary (19 April), M19A organised more than 500 people to set up a roadblock at the Sawhoyamaxa community in order to protest against the refusal to expropriate lands and to demand indigenous participation in the law reform.
3. This distinctive nature of the Guaraní results in their condition of travellers, transitory in their passage through the world and, in addition, in

the importance for the community ethos of visits between groups that are not limited or restricted to adults.

4. Whilst children bearing the signs of sexual abuse were reported, the prosecutor's file contained not one medical assessment stating this.

ARGENTINA

This report has been written during a period of serious political and economic crisis in the country: social protest, violence and political chaos.

This crisis is the result of a high concentration of wealth and a consequent rise in poverty and absolute poverty, which have been on the increase since the 1990s. Forced to face up to a huge foreign debt and blinded by their own greed, successive governments have implemented state reforms and enforced economic adjustment policies, privatisations, sales of key natural resources and a flexibilization of the workforce.

The course to final collapse

The year 2001 was marked by consecutive failures of the economic methods adopted, leading to greater indebtedness and a proliferation of social protests: the blocking of roads, demonstrations outside the houses of government employees ("*escraches*"), strikes, marches, national stoppages, etc. The response was one of indiscriminate repression, arrest and prosecution of demonstrators. Social protest became a criminal offence. In July, the government decreed a 13% compulsory reduction in state salaries and pensions and a 30% reduction in the national budget, with serious consequences for areas as important as health, education and social welfare.

In a country with a poverty rate of 50%, overall average unemployment of 18.3% and underemployment of 16.3%, never before seen levels of insecurity, corruption and generalised impunity, these measures heralded the final collapse. Faced with the creditor bank's refusal to consider a further request from Argentina, the government declared a financial default in December, confiscated the deposits of private savers and decreed a local currency devaluation of 40%, a

currency which, for the previous ten years, had maintained a one-to-one parity with the US dollar. The population saw this as daylight robbery; supermarkets and businesses were looted, and demands made for a change in economic policy and for the resignation of the nation's president only two years after taking office. The protests, which began peacefully with saucepan-beating in the streets, were brutally repressed by the security forces. In just one day, there were

BEST COPY AVAILABLE

29 atrocious civilian deaths and murders on the part of the police. The political crisis was such that Argentina had three presidents in the course of just one week. A decision of the Legislative Assembly, controlled by one of the main parties, gave office to Dr. Eduardo Duhalde, who lost the election in 1999. This leaves the country in the paradoxical situation of having a person running the government who has received no legitimacy from the people.

Although the situation is one of generalised uncertainty, there are still some points worth mentioning. Firstly, the people have adopted an attitude of fierce defence of the democratic system and, unlike in earlier days, whilst institutionality is clearly in crisis, it is not in danger. Secondly, a social phenomenon is taking place that is, in many respects, very interesting: this relates to the 'neighbourhood assemblies', which are demanding the replacement of all corrupt political officials by means of a general election, the impeachment of members of the Supreme Court of Justice and the return of all confiscated monies. Although it is impossible to predict the ultimate fate of these assemblies, or what results they may have, they are – for the moment - a positive sign that democracy continues to be exercised.

Gobernment policy and the rights of indigenous peoples

Any evaluation or assessment of the indigenous year must necessarily be seen within the context of the above events. Unemployment, underemployment and poverty, along with restricted budgets for state social welfare programmes have, in some cases, affected indigenous groups more than other sectors of the population. Increased occupations of indigenous lands and territories, along with the appropriation and destruction of their natural resources, ignoring indigenous rights to them, have been observed. Alongside this, there was a growth in indigenous self-awareness, and their organisational strength seems to be gaining fresh impetus. A greater interest in making contact between peoples can be seen, with joint demands being made and a growing trend towards training and education on issues related to their affairs. We will look at this in more detail below.

Ideology

Whilst it is clear that there is greater information about, and acceptance of, indigenous peoples in Argentina on the part of some government employees, the majority remain unaware of the legal framework

for protecting the special rights of indigenous peoples. Key areas such as the Ministry of Fuel and Energy, responsible for approving hydrocarbon exploration, are unaware that indigenous consultation and participation is a constitutional right protected by international law, by virtue of ILO Convention 169.

To this ignorance must be added a lack of understanding, or a failure to recognise, the specific nature of indigenous cultures and thus, when proposing and adopting measures targeting indigenous peoples, they continue to implement a reactionary integrationalist/paternalist programme. The deterioration in indigenous territorial rights is considered a "development" problem. So, overlooking the constitutional principle of "traditionally occupied lands" and self-determination (Convention 169), a recent Senate bill prescribed the use the communities must make of their lands ("agricultural and livestock farming, forestry, mining, industry and crafts").

INAI: no structure, no adequate budget, no indigenous participation

The National Institute for Indigenous Affairs (INAI) was established by law in 1985 as a decentralised organisation with indigenous participation, but the law was never implemented. Two decrees of the National Executive Power in 1991 and 1994 reduced its powers, transforming it into an office dependent upon other bodies. In August 2000, a ruling of the national courts ordered its constitution, within a period of 30 days, within the terms of the law. As of February 2002, this period of time long expired, its legal position remains irregular: it lacks both a structure and its own budget. It has no indigenous participation and its resources are paltry. As a decentralised state organisation, it requires a minimum of US$ 10,000,000 per year and yet, in 2001, it received US$ 500,000. Consequently, it was unable to fulfil one of its main objectives, which was to be involved in the processes of demarcation and delivery of lands, and very few indigenous projects received funding.

Current plans and programmes: state of progress

In 1996, the National Plan for Regularisation of State Lands (approximately 2,000,000 hectares) was launched for indigenous communities living in the provinces of Chubut, Jujuy and Río Negro. Agreements were signed with the respective provinces and money was transferred for their implementation. Almost six years on, the situation is as follows:

Chubut: Despite provincial decree 109/97, which created the figure of an indigenous mediator in the verification and measurement process, there has been no indigenous involvement; the Autarchic Institute for Settlement (*Instituto Autárquico de Colonización*) provides scarce and confusing information to the communities and imposes boundaries without consultation. The only property title issued, to the Mallín de los Cual community (9,082 has), is flawed and in violation of indigenous rights as it establishes a ban on the transfer of the lands for a period of twenty years, whilst the constitutional article governing this issue sets no limits or deadlines.

Jujuy: During 2001, this was the province that benefited the most from the Minister for Social Development, at that time president in charge of INAI, native of the province and candidate for national senator in the 2001 elections. In contrast to the province's lack of management and implementation capacity, the Atacama, Kolla and Omaguaca peoples met in a grand assembly of more than 300 people to form the Commission for Indigenous Participation (CPI), which will consider all aspects of the said programme in this province.

Río Negro: The formation of a Field Coordinating Team run by indigenous people has enabled progress to be made in achieving information-sharing meetings with the communities but no measurements have been made, nor titles issued.

International cooperation

Three programmes are receiving international support. The *Ramón Lista Integrated Development Project* (European Union, EU) is targeted at Wichí communities in the Formosa province. It has survived its most critical stage, caused by delays in the allocation of funds and a lack of leadership amongst the management and technical staff. The *Component of Assistance to the Indigenous Population* of the Programme of Assistance to Vulnerable Populations (Inter-American Development Bank, IDB), which covers some of the indigenous communities in the provinces of Chaco, Jujuy, Salta and Formosa, continues to be implemented in spite of bureaucratic prevarications. The project for *Development of Indigenous Communities and Biodiversity Protection* (World Bank, WB), which focuses on the provinces of Salta (Kolla), Neuquén (Mapuche) and Tucumán (Diaguita-Calchaquí), is still awaiting the formation of its Implementing Body.

Some of the year's events

In contrast to the meagreness of the budget for support to indigenous projects and for paying grants to indigenous students, which have been behind schedule since 2000, INAI did have sufficient resources to undertake "events". In this context, it organised a number of workshops with indigenous communities in different provinces and funded indigenous representatives to travel to meetings of interest to them. Two of these events are described below, by way of example:

Return of the remains of chief Mariano Rosas to the Rankülche people
Panghitruz Güor, born in 1825 and captured by the army in 1834, was handed over to General Juan Manuel de Rosas who acted as his patron, giving him his surname. In 1840, he managed to escape and return to his people. Upon his death in 1877, he was buried in Leubucó where he remained until, in 1879, his grave was desecrated by members of the Desert Conquest expedition and his skull was given to a researcher. For 123 years, it remained in the Natural History Museum of the La Plata National University, from where it was transferred in July 2001 to its original burial place. This act of restitution is worth highlighting as it was not only one of the Rankülche people's demands but also forms an important precedent for future indigenous claims over their historical and cultural heritage.

National Census of Population, Homes and Housing 2001
In fulfilment of a national law, the National Institute for Statistics and Census (INDEC) included a question within a general census of the population aimed at detecting homes with at least an indigenous component.[1] In order to initiate joint work, INDEC decided to consult the indigenous peoples on the way in which the census work should be undertaken and in order to create a basis on which to design and plan the 2002 additional survey. Five meetings were held with representatives from indigenous organisations and communities. The indigenous point of view in all of the meetings was that there had been no participation in the formulation of the law nor in its implementation. In spite of the fact that INDEC consulted various peoples, the majority considered the process lacking in legitimacy. At a national meeting, they therefore produced a document[2] and the Commission of Indigenous Lawyers in Argentina (CJIA) presented an appeal on the grounds of a violation of constitutional rights, requesting deferral of

the census. The Courts rejected this appeal and, after some comings and goings, alien to indigenous peoples, the census was carried out with the direct participation of indigenous census enumerators and trainers. In spite of this, many of them denied its validity, so much so that INDEC has agreed not to make the results public until the second stage has been completed.

By way of summary

Indigenous demands to INAI were essentially confined to two: 1) the urgent issuing of property titles over their territories and 2) the direct involvement of indigenous peoples in the decision-making regarding all issues of concern to them.

Until these demands are met, the legal defencelessness of the communities will continue to increase. On the one hand, the state admits it is powerless to avoid the occupation and misappropriation of indigenous lands by individuals, and the destruction of their natural resources thus continues without state control. On the other hand, the very same state is encouraging a policy of foreign and/or national capital investment for the establishment of various production activities within these areas. With regard to participation, in 2001 INAI attempted – with no success – to convene indigenous delegates to form the Council of Peoples, an initiative that came to nothing due to a lack of resources.

With neither budget nor political will, it is now clear that the successive Argentinean governments are refusing to listen to indigenous demands. If the required political mechanisms are not activated it will be impossible to guarantee indigenous peoples true recognition of their cultural identity and consequent respect for their special rights. Meanwhile, with masking tape and Band-aids, the plans and programmes for integration will continue. And the complaints and legal actions concerning violations of their rights will increase.

Worsening of conflict over territorial rights

As mentioned above, the delay in issuing property titles is aggravating the situation of legal defencelessness and the daily living conditions of the indigenous communities. It is not possible to list all the disputes here but we will take three examples.

The Lhaka Honhat Association of Indigenous Communities versus the Argentinean State

Proceedings in case no. 12094 of the Inter-American Commission on Human Rights are continuing. This relates to the complaint made by 35 communities of five hunter-gatherer peoples from a territory of 330,00 has of adjoining lands in the Chaco area of Salta province. In 2000, a friendly settlement procedure was initiated between the parties, which was suddenly cut short in 2001 by the government's refusal to recognise the spatial needs of the communities. Alongside this friendly settlement procedure, it continued to pester the communities in order to force a crack in the chiefs' unity such that they would accept its underhand community by community proposal "immediately and for a much reduced area of land"[3]. While awaiting a further meeting between the parties, supervised by the IACHR, the Association has pieced together a map with which to precisely define the areas of traditional use and to demonstrate scientifically the basis of their complaint. Meanwhile, the Salta government is secretly authorising a team of engineers to undertake apocryphal agreements between criollos and the indigenous people using arbitrary measurements, and the national government is planning to build a road through the indigenous territory.

Mapuche people versus Repsol-YPF

The historic lawsuit of the Painemil and Kaxipayiñ communities regarding contamination of their lands continues. The conflict concerns the Loma de la Lata gas deposit, the largest in South America. In March 2001, they reiterated their formal complaints concerning contamination of the water table and the "uncontrolled opening of paths, new pipelines and works" without any consultation, despite the fact that it had been agreed that any new works "would be approved by the Mapuche authorities through the Monitoring and Supervisory Committee".

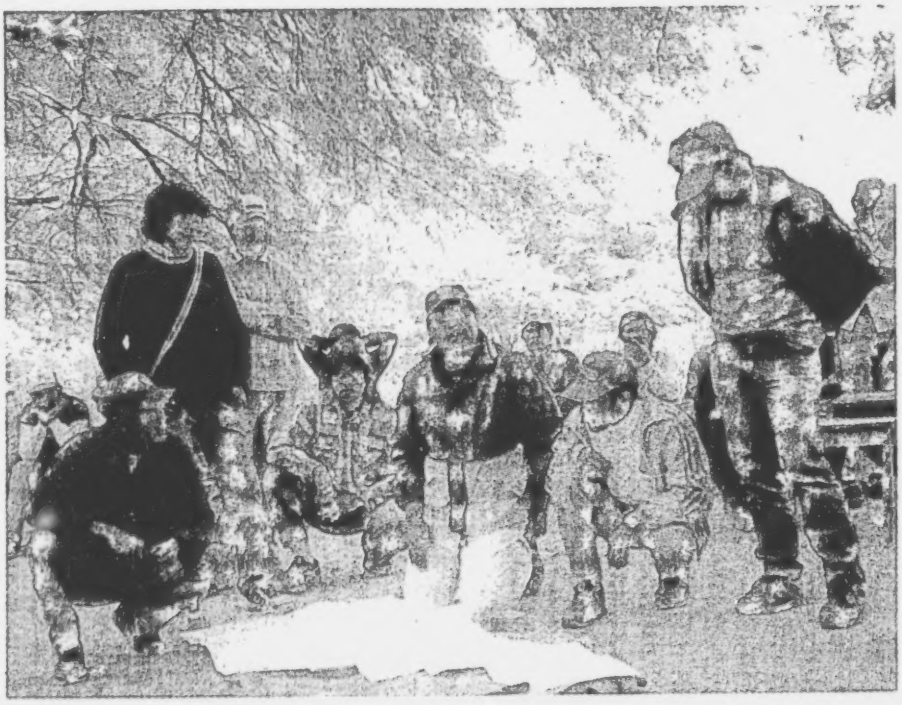
The company ignored the committee, and did not take these demands into consideration. For its part, the government of Neuquén province, legally bound to provide clean water to the communities, is failing to do so. In October, during a demonstration, "children, pregnant women and male members of the communities"[4] were suppressed and the *Lonko*[5] arrested. Within the context of a case that the Children's Ombudsman of the Province of Neuquén is taking to the IACHR, a working meeting was held in November in Washington with the attendance of both parties. Faced with the impossibility of reaching an agreement, the IACHR decided to convene a further meeting and undertake a visit "*in loco*" to verify the complaints.

Kolla Tinkunaku community versus Seabort Corporation /Norandino gas pipeline

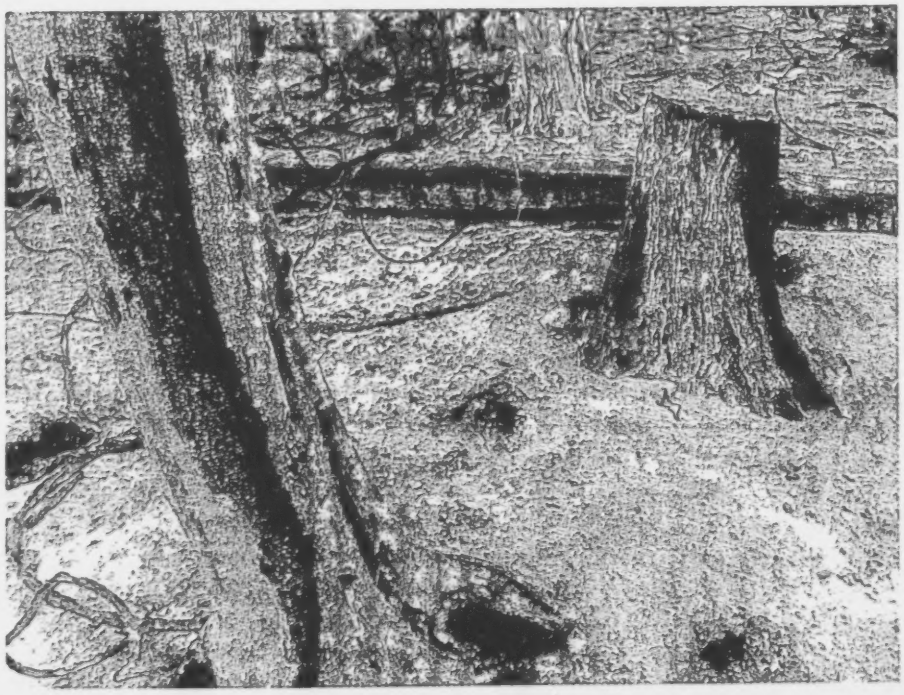
Whilst the case initiated by the Seabort Corporation for revocation of the donation made to the community by the El Tabacal sugar refinery continues, the communities making up the Tinkunaku indigenous organisation (San Andrés, Río Blanquito, Los Naranjos and Angosto de Paraní) have been affected by two explosions on the Norandino gas pipeline. The pipeline, which transports gas to Chile, was built on their territory without the community's agreement in spite of a case for protection of their constitutional rights being undertaken in their defence and in order to safeguard a species of native wildlife in danger of extinction. Tinkunaku and Greenpeace Argentina requested a change of route due to the dangers that would result from its construction on geologically complex lands, subject to strong seismic pressures and occasional landslips. This request was ignored and the gas pipeline was finished in 1999. It currently runs 70 kms over the indigenous territory, very close to the area of habitation. In March 2001, the gas pipeline exploded, terrifying the people and causing damage to the whole community of San Andrés and to the forest. In January 2002, another explosion occurred, amplifying its impact. Luckily, at that time there were no people in the area. However, 4 has of forest were completely scorched and the effect of the heat has turned the earth to brick. Whilst the National Gas Regulatory Body (ENERGAS) was aware of the situation, it did not supervise the company and now no one knows what will happen when the repairs are finished and the supply re-established.

The indigenous movement

Interestingly, given the general state of affairs, the indigenous movement is coming up with a number of responses and initiatives that are worthy of mention. On the one hand, the conduct of, and mass participation in, the regional meetings on the census demonstrates an increased political awareness at all levels, not only that of the leadership but also that of the community members. Nonetheless, although it would - for the moment - seem unlikely that a nation-wide unity can be achieved, there are indications of a consolidation of groups within regional bodies. This is illustrated by the formation of the *Committee of Indigenous Peoples of the River Pilcomayo Basin*[6] (Argentina, Bolivia and Paraguay) and its demand for participation in the binational and trinational bodies linked to the Pilcomayo basin, which decide on policies and projects to be undertaken by the member states



Mapping team showing the maps to the Lhaka Honhat communitiy. Photo: Morita Carrasco



After the explosion of the gas pipeline. Photo: Greepeance Argentina

BEST COPY AVAILABLE

in the said basin. Another is the group *Autoafirmación* ("Self-assertion"), made up of young Mapuche who have begun an interesting movement of cultural recovery and who have spread their voice through an awareness-raising campaign around the census.[7]

At the same time, a greater concern to deepen self-training with regard their rights can be seen, with a view to the process ongoing in the international arena. This is demonstrated by the grants obtained by some to participate in the World Conference against Racism and the United Nations programme of human rights training, and by events such as the *National Meeting of Indigenous Leaders*,[8] organised by the Council of Indigenous Organisations of Jujuy, and the *First days of reflection on the rights of indigenous peoples* jointly organized by the Commission of Indigenous Lawyers in Argentina.[9]

Notes and references

1 It is planned to complete the study with an "Additional Survey 2002" in order to find out the number and composition of all households noted in the first stage.
2 The *"Manifiesto de los Pueblos Indígenas de Argentina frente al Censo Nacional 2001"* (Statement of Indigenous Peoples of Argentina regarding the 2001 National Census) can be consulted at the following web page: www.geocities.com/RainForest/Andes/8976
3 Map of the Coordinating Body of Lhaka Honhat for the IACHR. More information can be obtained from: desc@cels.org.ar ; rmasociana@arnet.com.ar
4 Communiqué released by the two communities. More information can be obtained from: wajmapu@neunet.com.ar
5 Lonko: traditional leader among the Mapuche.
6 More information can be obtained from: fungir@ciudad.com.ar
7 More information can be obtained from: auafirmacion@yahoo.com.ar
8 More information can be obtained from: coaj_jujuy@hotmail.com
9 More information can be obtained from: pueblosindigenas@sinectis.com.ar

CHILE

The current situation of Chile's indigenous peoples, and of the Mapuche in particular, is one of dangerous and oppressive stagnation, caused by a lack of progress in the country in the processing of their demands and arriving at an understanding with the main social and political actors. This situation is the result of the cultural resistance that exists within different sectors of national society, along with a lack of flexibility in the politico-institutional system in Chile, which prevents achievement of the necessary reforms by which to satisfy indigenous land and territorial demands, the search for their constitutional recognition and approval of ILO Convention 169.

In addition, Mapuche demands have suffered from a growing process of criminalization, which is attempting to detract credibility and legitimacy from them. Those sectors most opposed to the indigenous movement are promoting images of supposed separatist intentions and links, thus far unproven, with radical far left groups. This campaign has been promoted by newspapers supportive of the business groups in conflict with the Mapuche. Since the September 11 events in New York, these papers have even circulated stories, unfounded, of supposed links between Mapuche organisations and the fundamentalist leader Osama Bin Laden.

The media have also attempted to conclude that the radicalisation of the Mapuche conflict is due to its links with the EZLN[1] in Mexico and ETA[2] in the Spanish Basque country. For the Mapuche, this strategy of stigmatisation only seeks to encourage greater police repression, along with the violation of their basic rights and legitimate demands.

Mobilisations and demands

Whilst the year 2000 was relatively quiet in terms of mobilisations and incidents related to the conflict between the Mapuche communities and the government and forestry companies, 2001 was, on the contrary, one of serious clashes, some of which resulted in many arrests and serious injuries. Such was the case of the police shooting of 4 Mapuche in the commune of Tirúa and the shots fired at two other community members in Galvarino and Victoria respectively. To this can be added various raids and police arrests, all characterised by unusually high levels of violence.

Of the most violent events, the raid on the headquarters of the *Consejo de Todas las Tierras* (on 19 July) has to be mentioned. This is

one of the country's most influential Mapuche organisations, along with the *Arauco-Malleco Coordinating Body*. A dramatic police operation took place, annoying the leaders who then opposed the action, leading to a violent police reaction resulting in arrests and injuries, among them the leader Aucán Huilcamán who, several months later (November 29) was still in prison accused, along with five other people, of attacking police officers.

The raid led to an unprecedented wave of solidarity among the Mapuche organisations, and brought about the formation of a "common front", which convened a mass march in the town of Temuco (July 25). Its aim was to condemn the harassment and repressive violence caused by the police and judicial operations against the communities and organisations claiming their territorial rights. The mobilisation was organised by the main Mapuche organisations of the Ninth Region and was supported by numerous Mapuche communities and civil society organisations, bringing together some 1,500 people and paralysing the main arteries of the town. The march ended in heavy police repression and serious incidents in the town's streets. In Malleco province (Araucanía Region), the land claims continued, as did the communities' protests against private individuals and forestry companies, leading to serious clashes with the police. As in previous years, some of the large forest owners showed demonstrations of force, threatening to take justice into their own hands if the government did not enforce the Law of Internal State Security.

In Temuco, the closure of the home for indigenous students triggered a wave of protest on the part of Mapuche university students. The pupils "took" the cathedral and organised a hunger strike to pressurise the authorities into finding a rapid solution to the problem. Apart from the issue of student homes, they were also demanding implementation of a Mapuche student policy. Meanwhile, the Pewenche and environmentalists' protests against the ENDESA multinational's Ralco dam have continued in the Alto Bío-Bío. Similarly, Mapuche communities from Temuco, Purén and Gorbea have tried, unsuccessfully, to close the municipal rubbish tips existing on their lands.

The general situation of Mapuche demands has been adversely affected by the severe crisis being experienced by the National Corporation for Indigenous Development (CONADI), a government body whose task it is to promote the development of indigenous peoples. CONADI, weakened and with little capacity to respond to indigenous demands, has fallen into disrepute, accused of corruption and administrative problems in the purchase of land for Mapuche communities, a situation which the government is investigating.

Convention 169 and reforms to procedural criminal law

Legal cases and the new procedural criminal system are two issues of deep concern to Chile's indigenous peoples. However, ILO Convention 169 has still not been ratified. After more than nine years of processing, it has been approved by the Chamber of Deputies and is currently to be found with the Senate. Due to complaints made by right-wing mem-

BEST COPY AVAILABLE

bers to the Constitutional Court, its approval has now become more difficult as it requires 4/7 of the Senate to pass it, a percentage which those sectors in favour of its approval are unlikely to gain.

Within the context of the modernisation of the Chilean judiciary, a new procedural system is now being applied as a pilot model in a number of the country's regions, one of which is the region of Araucanía. The Mapuche organisations have questioned this system, considering it discriminatory and degrading. Some organisations, such as the Konapewman group of Mapuche professionals, have raised the need to reform the system, incorporating a legal plurality that will enable the acceptance and validity of an alternative law based on customary law. This proposal has been rejected by members of the judiciary and right-wing politicians.

Historical truth and a new deal

In January 2001, the Commission for Historical Truth and a New Deal (see Chile in *The Indigenous World 2000-2001*) was established, presided over by the ex-president of the Republic, Patricio Aylwin, and made up of intellectuals and leaders from all the country's indigenous peoples. Its mandate is to review the past and to formulate proposals for a new deal. Two thematic sub-commissions have been formed on law and development, plus one sub-commission for each people. Six months of work was anticipated in which to gather the historical background detail for the autonomous drafting of proposals to the Commission.

The Commission sat in session throughout the year but the Mapuche did not participate until October as they had a number of objections to, and criticisms of, the initiative. The main Mapuche territorial identities were to be found among the organisations that did finally join the Commission. The Mapuche organisations that preferred to remain outside proposed the idea of replacing this organisation with a "State Commission" in which all the authorities would be represented and which, in addition, would comprise an international guarantor, to ensure the viability and decision-making capacity of the way in which it was run.

Poverty and development projects

In July, the results of the National Socio-Economic Characterisation Survey (CASEN) were made known. They revealed – once again – the conditions of extreme poverty in which the rural indigenous popula-

tion live. The survey showed that the Ninth Region, which contains the greatest concentration of rural Mapuche in Chile, is the poorest in the country, with 32.7% below the poverty line. The poverty indicators show a levelling off, even a worsening, of the economic situation of the rural Mapuche population, with figures of those in poverty reaching 50% in some of the communes with the highest levels of Mapuche population. In the First Region, where the greatest percentage of the country's Aymara population live, poverty has increased by almost four percentage points in relation to 1998. For indigenous leaders, the results of the survey, which measures levels of education, employment, income, health and housing, are proof of the failure of government social policies, imposed with little or no criteria for participation or respect for the cultural differences of the indigenous peoples.

In terms of reducing indigenous poverty, President Lagos' government negotiated a loan with the Inter-American Development Bank, IDB. The loan, approved on 28 Feb. 2001, will finance the *Integrated Development Programme for Indigenous Communities* with a credit line of 80 million dollars targeted at benefiting 12,000 indigenous families in 600 Aymara, Atacameña and Mapuche communities. Its objectives include the strengthening of local institutions, an increase in agricultural production and improvements in health and education services. Although the initiative has generally been well received, some Mapuche organisations have criticised its lack of participatory mechanisms by which the communities can define their own priorities and strategies.

Notes and sources

1 EZLN: Ejército Zapatista de Liberación Nacional – the Zapatista Army of National Liberation.
2 ETA: Euzkadi ta Azkatasuna – "The Basque Country and Freedom", the Basque liberation movement.

La Tercera daily newspaper
El Mercurio daily newspaper
El Austral de Temuco daily newspaper
www.mapuche.cl
www.mapuexpress.net
www.mapuche.nl
www.mideplan.cl
www.iadb.org

AUSTRALIA AND THE PACIFIC

BEST COPY AVAILABLE

AUSTRALIA

Australia's Aboriginal and Torres Strait Islander politics and policy worlds were blown away in mid-June 2001. Geoff Clark, elected head of the national Aboriginal administration, was said in vivid press reports to have been involved in four rapes of women 20 years earlier. Then, a high-profile Aboriginal magistrate, Ms. Pat O'Shane, commented that many women make up rape stories. Then, the former head of Aboriginal Reconciliation, Evelyn Scott, said her children had been abused by an Aboriginal politician, soon said to be O'Shane's brother. Uproar followed.

Uproar, hypocrisy and denial

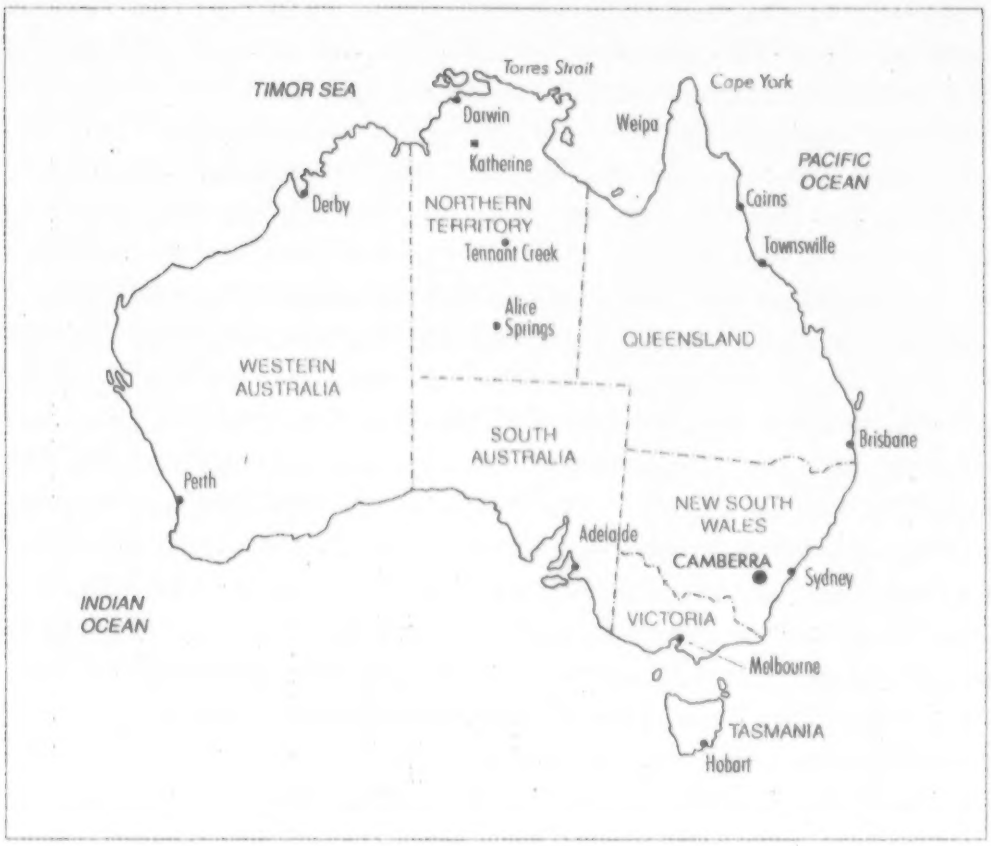
Whites, including politicians, newspaper editors and commentators feigned surprise and outrage at horror stories now widely reported in lengthy articles and TV items around the country. *Feigned* because books, articles, oral and visual reports about the real Aboriginal Australia have been appearing for many years. Worse, Aborigines and their non-indigenous friends and supporters were accused of having "hidden" this unpleasant information.

The *extent* and *acceptance* of violence against women and children within Aboriginal society became the key issues. The lions of white public opinion denounced Aborigines – especially leaders – and their white friends for allegedly "accepting" or ignoring the misery of communities and families. Editorials, commentators, talkback radio callers and hosts demanded that Aborigines act now, and stop talking – stop wasting our time with proposals for political, constitutional, social and economic reforms – and get busy solving their problems. Let's not hear about history, poverty, suffering and lack of funds, they cried; it is time for black people to do something!

In the meltdown from mid-June, it became impossible to speak of any indigenous subject but the physical and sexual abuse of women and children. Interest in other topics labelled one an idler or fool, while no measure – e.g., locking up local black men in razor wire cages to keep them from families – was too extreme for usually sensible people to propose. As with September 11, 2001, one must speak first of outrage to show one's moral seriousness and political correctness.

The shrill excess is clear. Surely white reactions would not be so extreme, so opportunistic, so *grateful*, if they did not allow Australians

188



the chance to express themselves vehemently on these issues – and at no moral or material cost. *Other* people, not we ourselves, are to blame for our worst and most shameful national problem! We are so good and concerned that we can now be openly upset about it; wallow in weekend newspaper cover stories, features, and photos, a pornography of violence; *and* overlook the role of our settlement, land and funding policies that have created the whole mess.

North-East corner

The most thorough and painful exploration of indigenous community violence in recent years was the work of Professor Boni Robertson and other indigenous women, *Aboriginal and Torres Strait Islander Women's Task Force on Violence,* 1999, sponsored by the Queensland state government.[1] However, the report did not receive the official urgency required so *Brisbane Courier-Mail* journalists Margaret Wenham, Tony Koch and others continued with tough press reports. The Premier said he was moved and launched another inquiry in 2001, headed by

BEST COPY AVAILABLE

a respected white male but with limited working time and regional focus on the Cape York Peninsula, the great north-eastern point of Australia. Judge Tony Fitzgerald's *Cape York Study* is now online.[2]

Cape York is already the focus of a special effort by the Queensland Premier's department, the *Cape York Partnerships*, a sort of anti-ideological pragmatic mix of good intentions and practical cooperation between government departments whipped along by the Premier's personal drive and prestige, and by local groups in the troubled communities of the region led by Noel Pearson, a high profile national Aboriginal leader. Pearson himself has led a national debate through a series of strong public speeches stirring up partisan animosities by his attacks on old Labour *confrères*, an approach that has led many to doubt his wisdom. However, in his most full and recent presentation, *On the human right to misery, mass incarceration and early death* (25 Oct. 2001), Pearson strongly and accessibly stated the practical needs and urgency of his approach.[3]

A quiet public moment in this year of slanging and sorrow over violence came on August 13, 2001, when Noel Pearson and Nunavut's Inuit premier Paul Okalik shared a lunchtime stage at the Brisbane Custom House and told an appreciative audience of the progress in their regions.[4] Many government officials were in the audience. Okalik's quiet charisma evoked much comment in Australia, where decibels have been more characteristic of recent debate on matters indigenous. He stressed that the political landmarks in indigenous politics were, after all, only practical openings for humble problem-solving and genuine human reconciliation. On August 15, when Okalik spoke in Canberra at the National Press Club, a nationally televised event, with Australia's Aboriginal elder statesman and leading moral force for Reconciliation, Patrick Dodson, the latter related the Inuit case of Nunavut to Aboriginal needs in the centenary year of Australia's Federation (i.e., 2001):

> *[P]olicy options of governments over the past 200 years or so, and especially since Federation, have kept us as ... playthings [.] At the moment we are a bit like toys that have been discarded but not yet thrown in the bin.*
>
> *It is because of these uncertainties, and the insecurities of our lives and our future under government control, that we have reawakened the call for a treaty between the government and us.*
>
> *As a nation, we've got to find the courage to face that prospect and I wouldn't have thought it so daunting. When I deal with lawyers,*

business people, Aboriginal and other groups in society, there are contracts often involved.

A treaty is necessary to...

Recognise Aboriginal people as people with rights to the same standard of service expected by others, but also our rights to be indigenous and to manage our own societies on our own lands at our own pace and in our own way.

... But ultimately, a treaty would represent real "practical reconciliation"...

It will come when we realise that the only alternatives are fear, racism, ignorance and continuing social dislocation.[5]

"Practical reconciliation" is the Howard government's phrase for the trickle of welfare state programs, its substitute for addressing the agenda of Aboriginal leaders.

Torres Strait Islanders

At the tip of Cape York, Australia's second indigenous people, Melanesian Islanders of the islands and shores of Torres Strait, have continued to seek regional political autonomy and recognised sea rights within Australia. Their latest political proposal, *A Torres Strait Territory Government*, resulting from extensive community consultations, was published in October 2001.[6] They want a government for all regional residents, regardless of ethnic background, to fit within Australia's constitutional structure. The proposals are moderate and workable.

However, they do not place much emphasis on the major issue for Islanders, sea rights and the power to manage what happens in the seas of their region with its hazardous reefs and rich fishing grounds. In 2001, Islanders won a sensational court case in which they were acquitted of confiscating the fish catch of non-indigenous fishers, a case widely misunderstood as recognising more indigenous rights than it does. The danger for governments is that someday, in a crisis, whether a development project approval or pollution accident, Islanders will realise that despite recent ceremonial handovers of na-

191

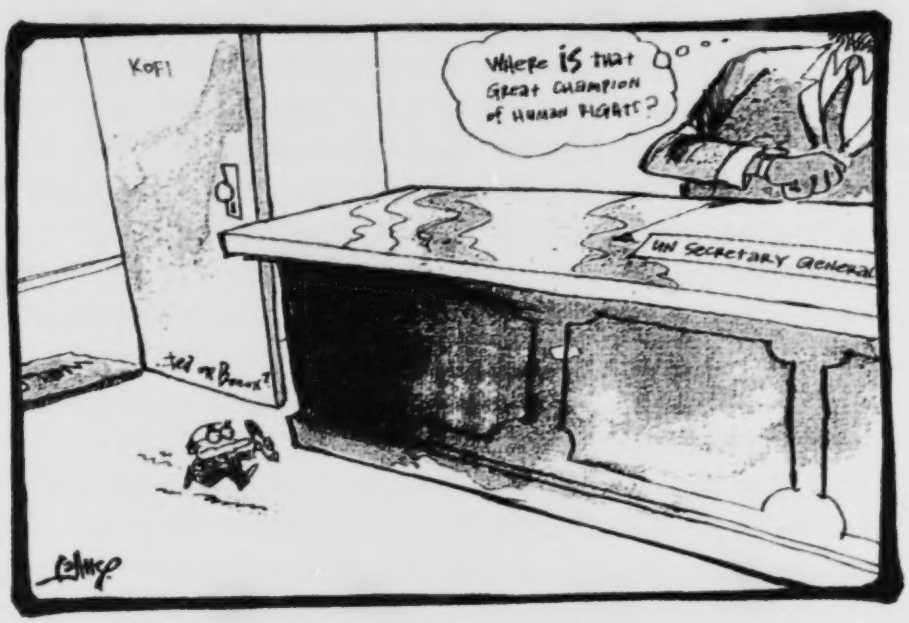
tive title they have few rights. Then their supposed "moderation" compared with Aborigines will evaporate.

Self-Determination home and away

The Howard government and some right-wing commentators have been blaming *self-determination* for the problems and violence suffered by Aboriginal people. That term, conflated with *separatism* in such minds, was over-optimistically used by earlier governments to dignify their indigenous policy goals, goals never nearly reached. They also oppose self-determination and its spirit at the United Nations. For instance, at the tail end of the world racism summit (WCAR) in September 2001, the Australian government representative spoke up for the benefits of colonialism.

Another divide opening up *within* the discussion of self-determination was evident at the conference *Rethinking Indigenous Self-Determination* at the University of Queensland in September 2001.[7] For some, the key issues are political and constitutional relationships, while others seek to convert government program relationships into something like self-government. Neither of these two approaches is workable without the other; both frameworks and daily needs must be addressed. The emphasis today on piecemeal approaches, however understandable in the current Australian climate, risks becoming a form of official micro-management and continued obsessive control of indigenous people.

The cancelled meeting of the Commonwealth of Nations (former British Empire) heads of government (CHOGM) of October 2001 is to take place in March 2002. Whereas the original plan was for many public events and much scope for local and international cultural, social, and political input, Howard is clearly happier with the new approach hidden far from public gaze (in the name of security since September 11, of course) at a resort north of Brisbane. Unfortunately, the new Commonwealth Association of Indigenous Peoples (CAIP) has been unable to organise itself in time to contribute greatly. However, the moral energy of Honourable Margaret Reynolds, retired Australian senator, minister and part-time academic, who now spearheads much of the Commonwealth's human rights work, and Helena Whall running the *Indigenous Rights in the Commonwealth Project*, University of London,[8] have seen clear proposals put forward for this meeting. The Commonwealth is one of the few international organisations that has not adopted a commitment to indigenous issues but, with 54 member countries, including many of the best and worst indigenous contexts, there is much scope for active precedent.



Prime Minister Howard visiting Kofi Annan in New York.
Leahy in *Courier Mail*, Brisbane 5.09.2000

Orphan of the Pacific

Australian television news on February 5, 2002, featured foreign minister Alexander Downer meeting United Nations High Commissioner for Human Rights, Mary Robinson. Downer said he told Mrs Robinson that Australia's tough stand against asylum seeking "boat people" was strongly supported by the Australian public. Mrs Robinson was then shown with a sad and gentle smile saying that human rights were not about "popularity". Downer, often portrayed by political cartoonists, those scathing and shrewd chroniclers of Australia's national life, as an oversized and not very bright schoolboy, now looked more the part than ever compared with Robinson as the kind but firm schoolteacher. It was a picture of the Australian situation today.

Having nothing to say or argue but only prejudice to incite, Howard is left simply abusing Mary Robinson as in the Downer case above (Radio interview transcript, Prime Minister's Media Centre, 6 February 2002), or anyone else who disagrees with him. Since the beginning of 2000 (see *The Indigenous World, 1999-2000* and *2000-2001*), Howard has openly opposed international human rights processes and standards, even warning UN head Kofi Annan not to speak

BEST COPY AVAILABLE

of these matters in Australia and saying they were domestic partisan ploys. Howard's UN visit in 2000 allowed cartoonists to ridicule his aggressively childish approach (see drawing). But the desert prison camps where asylum seekers are held for long periods, and Howard's use of military "special forces" to storm the ship *Tampa* at sea in August 2001, his government's intimidation of the captain and attempts to throw overboard the spirit of international law and basic humanity, his refusal to let further boat people ashore and his "Pacific Solution" of buying prison camp space in poor mini-nations like Nauru have now become an international scandal. Howard enjoys the fuss, posing as defender of Australian prejudice against "elites" at home and abroad. It is the central feature of his politics.[9] However, clever race strategy using Aborigines or Afghans is still official racism, and that is the problem of the Howard era and government. It has defected from the "first world" moral community.

Howard cares little for international agreements freely entered into by Australia, although he freely admits using those that suit him. Dictates of conscience or the brutalising effects on domestic society of brutal acts of omission or commission towards "the Other" make no impression. Rather, desperate people floating around in leaky overcrowded boats, many of whom have already drowned off Northern Australia, and Aborigines and other minorities serve only the populism of the moment and Howard's *idées fixes*. Meanwhile, Howard rejects notions of international community and obligation apart from the global economic and military macro-facts and is now trying to simplify by signing Australia over to America through free trade and full support for Bush's wars and foreign policies (including rejection of the Kyoto accords).

Conclusions

Now, in mid-February 2002, some chickens are coming home to roost. Several sources and an official report have found that the Howard government knew for a month or more during the election campaign that its lurid tales of boat people throwing children overboard were untrue, while it misused military and civil personnel and powers to manipulate political and electoral affairs (all news media, 12-15 Feb. 2002). Scepticism among the public is great because trashing the image and rights of vulnerable people for political self-aggrandisement is such a "John Howard" thing to do! Howard has responded typically. (1) He has blamed a former minister, and his government is blaming subordinates, while forbidding Defence officials to com-

ment. (2) He has said there is no issue at all but only Labour whining over the 2001 election they lost. (3) And in his "puffer fish" mode he has proclaimed pompously that, "I don't apologise for anything that was done in defence of the national interest". Another day of national uproar, later he tells the country that attempts to know the truth are "politically motivated", an unseasonable sensitivity in a man who reduces almost all to partisan ploys. The real issue is credibility, integrity, and the fitness to govern of leaders.

As Mike Carlton sums up (*Sydney Morning Herald*, 16 Feb. 2002),

> *What is starkly clear ... is that senior ministers – most culpably the Prime Minister – did not seek the truth of the matter because the lie suited their political purposes very well, thank you. They were engaged in one of the nastiest stratagems of authoritarian government, which is to shore up that authority by vilifying a minority racial or religious group and inflaming the populace against it. In a multicultural society such as ours, this is almost criminal irresponsibility.*

The Howard government's official motives and statements on human rights, indigenous peoples and asylum seekers are not credible, at home or abroad. There is also a total failure or refusal of imagination and empathy, and of moral solidarity, with fellow human beings. Given the recent behaviour of Howard and his ministers, one may well imagine how *they* would act if caged together in the desert for a few months, or sardined into a leaky boat drifting in the Indian Ocean.

Notes and references

1 Report online:
http://www.qldwoman.qld.gov.au/publications/main.html
2 Report online: http://www.premiers.qld.gov.au/about/community/capeyorkreport.htm
3 Report online: http://www.capeyorkpartnerships.com/noelpearson/index.htm
4 Report online:
http://www.brlsinst.org.au/papers/okalik_paul_dialogue/
5 *The Age*, Melbourne, 16 August. 2001.
6 Report online: (http://www.tsra.gov.au/4001.pdf
7 Proceedings will be published by conference organiser and editor Geoff Stokes, Deakin University.
8 Website: http://www.cpsu.org.uk/projects/indigenous.html
9 See e.g. **David Solomon. 2002.** "Media Manipulation". *Howard's Race*, ed. David Solomon. Sydney: Harper Collins.

Pacific Free Trade Area: Controversy over PACER and PICTA

In August 2001, the Pacific Islands Forum (formerly known as the South Pacific Forum) endorsed, and opened for signature and ratification, the Pacific Islands Countries Trade Agreement (PICTA) and the Pacific Agreement on Closer Economic Relations (PACER). PACER is an economic cooperation agreement amongst all Forum members that sets out the Forum region's vision on future trade and economic relations, while the PICTA will, excluding Australia and New Zealand, establish a free trade area among the other 14 Forum island countries after a 10-year transition period.

While the Forum hailed these agreements as providing the basis for increasing regional integration and as a means to effectively prepare members' economies to respond to globalisation, the NGO-based Pacific Network on Globalisation (PANG) sees both agreements merely as stepping stones towards full compliance with the World Trade Organisation (WTO). Although they require ratification by a majority of member countries to become effective, PICTA and PACER may be triggered as early as September 2002, when the European Union (EU) begins free trade negotiations with Pacific States under the Cotonou Agreement.

The EU has indicated that it would seek another five-year waiver of its preferential trading arrangements with the African, Caribbean and Pacific (ACP) countries until 2006 but that, after that, it intends to have a trade regime that conforms to WTO rules. It has therefore communicated to the ACP countries that it wants to create a free trade area with each of the three sub-regions. The EU is facilitating the implementation of the Pacific free trade area by providing technical assistance for the reforms in the respective Forum countries, and funding three experts for the Forum Secretariat, a Trade Policy Adviser, Trade Development Officer and a Fiscal Reform Officer. These legally binding agreements will thus make Pacific islands states conform to WTO trade rules by gradually opening their economies to free trade.

The Forum acknowledged that there may be some adverse social effects but claims the impact "is expected to be small" and temporary. But Pacific civil society and observers remain unconvinced at the Forum's portrayal of the potential social effects when one looks at the

196

experience and impact of liberalisation and free trade areas in other regions of the world. Non-governmental organisations, community and church groups have expressed concern at the non-transparent manner in which discussions on a free trade area have been conducted.

PANG is particularly concerned about the impact of free trade on the ownership of and access to land. The Pacific region's system of communally-owned land directly conflicts with the view that the resources should be used by those who can put them to the most productive or profitable use and that all should have equal access to the globe's resources.

In response to the Forum, PANG expressed concerns at the impact of free trade on small island communities and called on Pacific governments:

- Not to ratify PICTA and PACER.
- To withdraw from the agreements if already ratified.
- To refer decisions on PICTA and PACER to national parliaments and encourage public debate.

The Pacific faces waves of asylum seekers

In the Pacific, Aotearoa/New Zealand, Fiji, Samoa, the Solomon Islands, Tuvalu and Papua New Guinea are signatories to the 1951 Refugee Convention (although Papua New Guinea has listed reservations to certain articles in the Convention). The signature of France, the United States and the United Kingdom cover their colonies in the region. Nauru has not signed the Convention, even though the government of Nauru has agreed to set up a camp for refugees seeking asylum in Australia.

Compared to Africa, Asia and the Middle East, there are relatively few refugees in the Pacific islands. But it is a growing problem for the region as refugees flee from conflict into neighbouring countries (e.g. from West Papua to Papua New Guinea; Bougainville to Solomon Islands, Timor Lorosa'e to West Timor). Thousands of people have also been internally displaced within countries (e.g. in Bougainville, Solomon Islands and Fiji).

Australia, however, has restricted the rights of refugees from neighbouring countries. With the exception of a handful of West Papuans who have successfully claimed protection and permanent residency, successive Australian governments have refused to consider requests from West Papuans seeking refugee status in Australia.

197

Pacific peoples reject Australia's "Pacific Solution"

Pacific peoples including chiefs, church leaders and NGOs have strongly opposed Australia's plans to use Pacific islands as "processing centres" in its effort to curtail the flow of asylum seekers heading for Australian shores. The current crisis that began with the Tampa incident in August 2001 escalated when 224 asylum seekers from the Indonesian boat *Aceng* defied the Australian Government for two weeks by refusing to be taken off the Australian warship *HMAS Manoora* to an Australian-built detention centre on Nauru. The deadlock was broken when the Australian Government used force to remove 12 Iraqi leaders, despite Nauruan Government statements that it would only accept voluntary arrivals. Media access to asylum seekers was stopped, making it impossible to obtain accounts from people as to whether they did leave voluntarily.

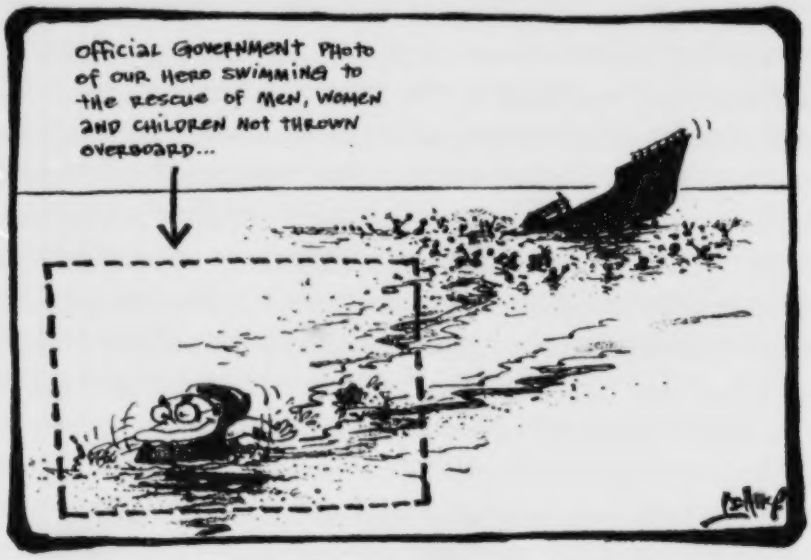
As well as paying for the costs of establishing camps in Nauru, Australia offered $20 million to the Nauruan government. While recognising Australia's responsibility to provide development assistance to neighbouring island countries, many people regard this money as a bribe rather than a considered policy that would allocate aid to long-term development priorities. For Pacific peoples, Australia's so-called "Pacific Solution" is just another way of using the Pacific as a "dumping" ground and at the same time evading its obligations under international law.

By January 2002 over 1,550 asylum seekers had been located in detention camps in Nauru and Papua New Guinea (PNG). But the refugee issue is creating tension and uncertainty. In PNG, the Prime Minister sacked the Foreign Minister after he rejected Australia's request to take more asylum seekers "based on the belief that Australia has the capacity and resources to deal with the problem itself". A local village chief from Manus province, where the refugees have been taken, said the refugee problem was putting pressure on the provincial government and creating animosity among the people.

When the Fijian government established a task force in October to study the question, it received strong criticism from chiefs and provincial councils. While the Fiji Human Rights Commission stated that Pacific countries like Fiji have an obligation to look after refugees who enter its territories, many non-government groups believed that because of Australia's comparatively superior financial and economic position and bigger land mass, there was no need to exploit its Pacific neighbours as processing centres for refugees.

It is understood that many Pacific governments are trying to make money out of the refugee situation, and Australia is tying the refugee

198



Prime Minister Howard and the refugee ship:
Leahy in *Courier Mail*, Brisbane 18.02.2002

issue into aid deals and benefits, and financial incentives. Many Pacific governments have undertaken or are undertaking to receive the refugees without wide national consultation on the issue.

A joint statement by the Pacific Conference of Churches and regional non-governmental organisations appealed to Pacific governments to carefully consider the long-term consequences and impacts of accepting aid deals in connection with refugees. For civil society organisations, accepting refugees bound for Australia for the sake of money will only add more problems and will have adverse impacts on Pacific communities, as well as on the sovereignty of Pacific nations. The statement further adds that accepting Australian aid deals will "make Pacific island governments part of the process that solicits money/profits out of trade in human trafficking, and in this case the asylum seekers".

Ten Uses the World has for a Pacific island

1. A testing ground for atomic and hydrogen bombs – bravo!!!
2. A target for ballistic missiles and nuclear warheads.
3. A country club for military personnel.
4. An incinerator for unused chemical weapons.
5. A dump for toxic and radioactive waste.
6. A ghetto to put the people whose villages get in the way of 1-5.

7. As a model of a beautiful and pristine environment...and a paradise colony far away from home.
8. Someone to bully when you're too small to bully anyone else.
9. Somewhere to sell your food to when it's past its use-by date.

And announcing the latest...

10. A centre to process (read "dump") refugees to avoid your international responsibilities and try to win elections.

Intellectual Property Rights: For a better protection

The protection of the rights to intellectual property has been on the agenda of Pacific governments for decades. But only recently has the Pacific Islands Forum finally taken to task the development of a comprehensive regional legal framework for the promotion and protection of traditional knowledge and cultural expressions.

In June 2001, Forum Economic Ministers discussed a model law for intellectual property rights that would encompass cultural and bio-piracy rights. The model law and a model policy framework, once endorsed, would be taken by Pacific countries in the next few years and adjusted to their different country circumstances in order to be enacted.

However, while the Pacific Region awaits a proper and enforceable legislation to protect its intellectual property rights, reality has forced individual governments to initiate measures of protection and benefit-sharing between bio-prospectors and communities that are the custodians of indigenous knowledge.

But ultimately the absence of adequate legal protection of intellectual property at national and regional level makes small Pacific nations more vulnerable to international bio-piracy.

The example of Samoa

Samoa has signed a "landmark agreement" with a US research group that will guarantee 20 percent of revenue received from the development of an experimental but promising anti-HIV / AIDS compound from the bark of the Samoan "mamala" tree.

The experimental compound is called Prostratin. The research group, AIDS ReSearch Alliance of America (ARA), has announced that the agreement will return 20 percent of any commercial revenue derived from the use of this compound to the people of Samoa who helped American researchers discover the plant-derived potentially

life-saving therapy. ARA said the agreement provides a share in the potential proceeds from the first compound ever licensed by the National Cancer Institute (NCI) of the US National Institutes of Health (NIH) for development by a non-profit research institution.

Signed in September 2001 by the ARA and Samoa Prime Minister Tuilaepa Sailele Malielegaoi, the agreement gives the Samoan government 12.5 percent of the profits. Another 6.7 percent goes to the village Savai'i, next to the Falealupo Rainforest where the healers who provided the initial health information that eventually led to this agreement live. The Associated Press said that the families of two Samoan women, who died in their eighties after passing on their knowledge of the tree's healing powers, will each receive 0.4 percent. The NIH also gets 5 percent of any profits.

In licensing the compound for development, the NCI requested that there be negotiations with the Samoan government for benefits for the Samoan people. ARA, a non-profit group based in West Hollywood, California licensed Prostratin from the NCI in order to explore the compound's ability to protect cells from HIV and to activate a virus that lays dormant in the body and beyond the reach of currently available HIV drugs.

After paying out according to the agreement, the ARA will use any revenue it derives from Prostratin for additional HIV / AIDS research.

KA PAE'AINA (HAWAI'I)

US Army threatens Makua Valley

Makua Valley is a sacred place. It is the birthplace of Kanaka Maoli, the indigenous peoples of Ka Pae'Aina (Hawaii). To the United States Army, Makua Valley is a sorely needed training area, where troops from the 25th Infantry Division could fire rifles, mortars and howitzers in the closest approximation to combat short of war.

The US Army plans to resume combat training in Hawaii's Makua Valley but local indigenous groups, residents and environmentalists say the training is destroying the valley's cultural, historic and envi-

201

ronmental legacy. "Our problem with the military is they don't understand the significance of Makua Valley," said William J. Aila Jr., a leeward coast resident and outspoken opponent of the Army's plans. "They're bombing the Earth Mother."

The Makua Valley rises from the leeward coast of Oahu into the volcanic bluffs of the Waianae Mountains, home to a multitude of endangered species. The valley floor is peppered with archaeological ruins, including the remnants of temples where humans were once sacrificed.

The Army suspended training at the Makua Military Reservation two and a half years ago amid a public outcry that followed several bush fires sparked by gunfire. The Army's presence in the valley dates to the 1920s, when the service installed gun emplacements there. After the Japanese attack on Pearl Harbour, the Army confiscated 6,600 acres in and around the valley to train troops for World War II, evicting ranchers who lived there. It still occupies nearly 4,200 acres today.

For decades, the Army and the other services bombed, strafed and otherwise carried out training exercises in Makua Valley with relative impunity. In recent years, however, the training has drawn protests from residents and, increasingly, the attention of federal regulators.

The fires that prompted the Army to suspend training in September 1998 raised concerns among officials with the United States Fish and Wildlife Service about the threat posed to 41 endangered species of plants and animals in or near the valley.

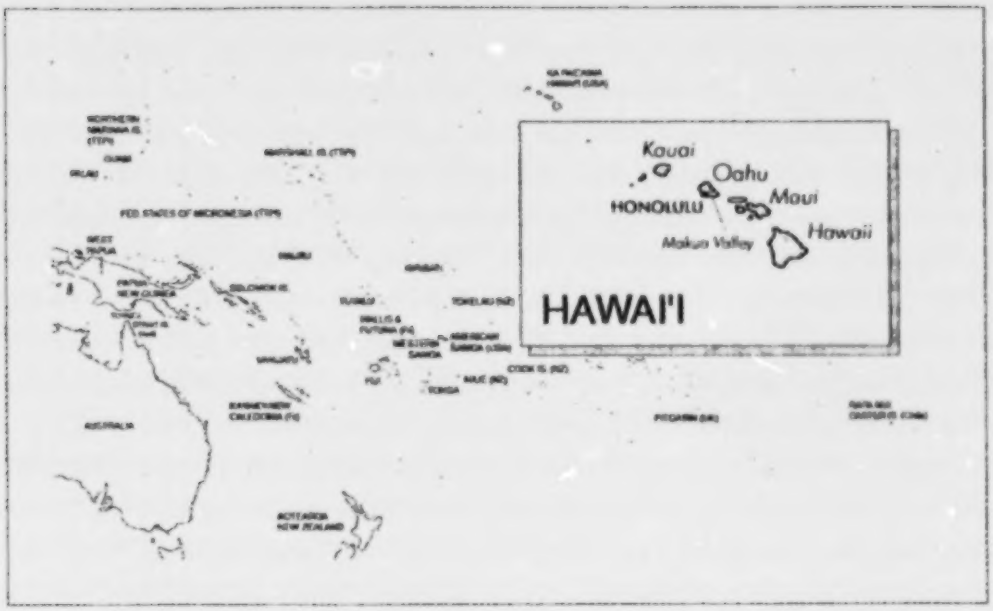
It was then that the Army's legal battle began. A group of residents and an advocacy group, the Earthjustice Legal Defense Fund, filed a lawsuit demanding that the Army comply with the National Environmental Policy Act and conduct a thorough review of the impact that training was having on the valley.

The Army ultimately settled the lawsuit, agreeing not to resume firing weapons in Makua until it had reviewed any potential impact and notified the public in advance. After more than two years of study, the Army announced in December 2000 that it planned to resume training, albeit in a more limited way, with units of more than 100 soldiers conducting operations and firing weapons in narrowly drawn zones.

The 25th Division's commanders argued that they had designed the training to minimize, if not eliminate, the effects on Makua Valley's historic sites and environment, but the plan provoked a new round of protests and a new lawsuit.

This time, the residents contended that the Army had failed to conduct a more rigorous and expensive environmental impact study. The less time-consuming environmental assessment, they said, did not consider a variety of issues, including whether there were alter-

202



native sites for military training. After protests that included a raucous community meeting in the town of Waianae in January, the division's commanders withdrew their plan, saying they wanted more time to consult with residents and others.

The Army also tried to have the lawsuit dismissed but, on March 1 2001, a federal judge in Honolulu refused.

TE AO MAOHI (FRENCH POLYNESIA)

Tavini makes gains - but Flosse wins again

President Gaston Flosse was returned to power on 6 May 2001, in elections to the Territorial Assembly in Te Ao Maohi (French Polynesia). Bolstered by French Government funding, Flosse's party *Tahoeraa Huiraatira* increased its majority by one seat, winning 28 seats in the 49-seat assembly, with the President returning for his fifth term in office.

The pro-independence party, *Tavini Huiraatira*, won 13 seats in the elections, an increase of two from the last vote in 1996. The autonomist party, *Fetia Api*, promising a "third way", won seven seats, while

BEST COPY AVAILABLE

Chantal Flores, running as an independent in the Australs archipelago, won the final position in the assembly. Overall, the percentage of votes for the major parties was: *Tahoeraa Huiraatira* - 48.8 per cent; *Tavini Huiraatira no Te Ao Maohi* - 25.4 per cent; *Fetia Api* - 13.1 per cent; *Ai'a Api* - 3.4 per cent; *Taparu Amui no Tahaa Pae* - 0.7 per cent.

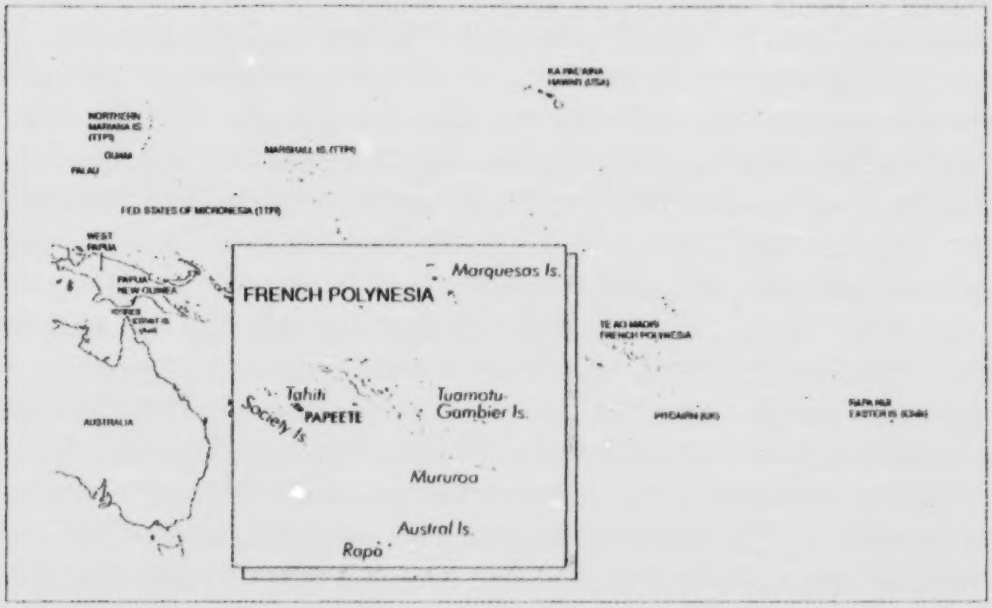
Pro-independence forces had hoped for a better showing in the elections, aiming for 18 seats, but the big loser was long-time autonomist politician, Emile Vernaudon, who has come out in opposition to Flosse in recent years. This benefited *Fetia Api*, led by Boris Leontieff, the Mayor of Arue. Leontieff, a former Flosse minister, is opposed to independence but also critical of Gaston Flosse's corruption and mismanagement.

Another feature of these elections was the new French electoral law requiring parity between men and women on electoral lists. As well as longstanding leaders like Oscar Temaru and James Salmon, pro-independence women such as Tea Hirshon, Tina Cross and Tamara Bopp du Pont were elected on the Tavini list. Other candidates elected on the Tavini list included former trade union leader Hiro Tefaarere of *A Tia i Mua*, Marius Raapato and Vito Maamaatua (director of the pro-independence radio station *Te Reo o Tefana*).

Since the closure of France's nuclear testing centre, the *Centre d'Expérimentations du Pacifique* (CEP) in 1996, France has provided funding of almost US$200 million a year to the colony. The CEP was the key source of revenue for the Flosse administration, and French President Jacques Chirac guaranteed a similar amount of revenue to Flosse for ten years after the end of testing, to ease the transition into a post-nuclear economy.

Flosse has used his control of the territory's administration to woo opponents over to the majority – in the last government, there were 17 ministers and Flosse has used government patronage to gain support. The magazine *Tahiti Pacifique* reports that some 500 government workers on short-term contracts were encouraged to campaign for Flosse's ruling majority, to ensure that their government employment would be renewed.

The French Government or French corporations control the major media, and pro-independence politicians are regularly censored, with free access only to *Te Reo o Tefana*, the pro-independence radio station in the municipality of Faa'a. Flosse extensively used the new station TNTV for his electoral campaign (critics of the President noted that interviewers on the station seemed to be using question scripted by the President's media office!). In the lead up to the elections, media outlets regularly highlighted current crises in the Solomon Islands, Fiji and Papua New Guinea, in a not-so-subtle suggestion of the dangers of political independence.



Pro-independence candidates sought to mobilise on the ground. On 1 May, just days before the election, hundreds of Tavini supporters rallied and marched around Tahiti carrying tne blue and white independence flag, marked with five gold stars (symbolising the five archipelagos of Te Ao Maohi).

A major advantage for the ruling *Tahoeraa* party is the electoral gerrymander that ensures that a vote in the outer archipelagos of the far-flung country weighs far more heavily than a vote in Tahiti or the heavily-populated Windward islands. As a member of the French National Assembly, Emile Vernaudon had sought electoral reform in 2000 to remove this imbalance but legislative changes only led to an expansion of the Territorial parliament from 41 to 49 seats. Politicians from the pro-independence parties are faced with enormous constraints in terms of finance, travel and communications to reach voters in the outer islands, in a country as large as western Europe. In contrast, Flosse used government resources to travel and offer inducements for voting in the isolated archipelagos.

In contrast, 32 of the 49 assembly seats are found in the Windward islands (including the two main islands of Tahiti and Moorea). It was here that Tavini polled best, as Oscar Temaru noted: "In many towns of Tahiti, the opposition still has more support than Tahoeraa."

BEST COPY AVAILABLE

205

A better Fiji through the ballot?

A ruling by the Court of Appeal in March 2001 that the 1997 Constitution remains the supreme law of the land set Fiji on the move for fresh general elections in August 2001. Seventy-one seats were to be contested under the preferential voting system: 23 Fijian communal seats, 19 Indo-Fijian communal seats, 3 General Voters, 1 Rotuman and 25 Open seats.

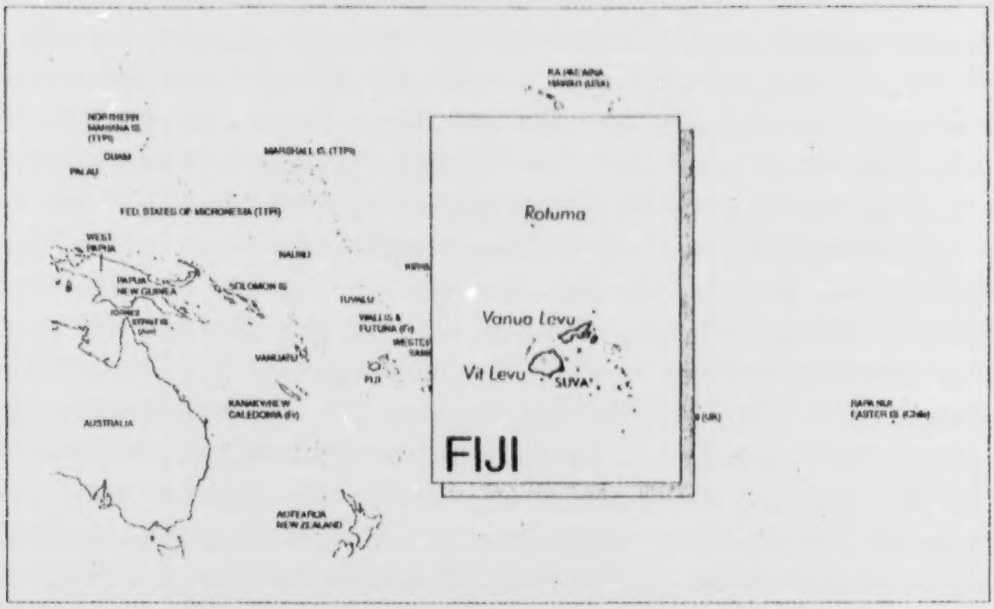
The Fijian parties and their voters

Voters for the 23 Fijian communal seats were wooed by over 20 political parties with an array of ideas, attitudes and personalities. A sign perhaps of the various differences in politics and policies among the indigenous Fijians with regard to what is needed to safeguard their rights and interests. But the number of parties also reflected attitudes of provincialism and in-fighting among Fijians that were heightened after the 19 May 2000 coup. It also reflected the continuing search for good leadership, ideals and development that will benefit the Fijian people.

Central to the debate on Fijian rights and interests was the 1997 Constitution. Two of the new Fijian political parties formed in the wake of the attempted 2000–coup, and which emerged as frontrunners, the *Matanitu Vanua* (Conservative Alliance Party) and the *Soqosoqo ni Duavata Lewenivanua* (SDL), thus announced their intention to change the constitution to guarantee indigenous Fijians political paramountcy.

Tied to the question of political paramountcy was the question of what policies must be put in place for Fijian development in their own land. The SDL party, led by caretaker Prime Minister Laisenia Qarase, was holding their "Blueprint for affirmative action for indigenous Fijians" as a trump card. The *Soqosoqo ni Vakavulewa ni Taukei* (SVT) party, which ruled the country from 1992 to 1999 under Sitiveni Rabuka, had to struggle as many of their members had defected to the SDL and the Conservative Alliance. Now led by Filipe Bole, the party took a more moderate stand opposing the SDL blueprint as racist and, while they supported a review of the 1997 Constitution, they said that Fijian political supremacy was not needed. Former Prime Minister and 1987 coup leader Rabuka pulled out of the elections citing personal reasons. On the other

206



hand, the 19 May 2000 coup leader George Speight and his accomplices Ratu Timoci Silatolu and Ilisoni Ligairi were granted permission by the Court to contest the August elections. Speight and Silatolu contested under the Conservative Alliance banner while former British SAS soldier Ligairi stood as an independent candidate.

Moderate Fijian political parties like the Fijian Association Party under Adi Kuini Speed, the Party of National Unity (PANU) and the New Labour United Party (all formerly part of the deposed People's Coalition government) decried the idea of Fijian political paramountcy but called for better Fijian leadership. These parties, together with the Labour Party, have a more multiracial character, although both the Conservative Alliance and SDL also fielded Indo-Fijian candidates and said they too believed in multiracialism, as long as Fijian interests and rights were safeguarded to their liking. But among the Fijian political parties, there were many that were clearly provincial in nature, and banking on their strongholds in the provinces from which they were created to pull them through.

The country's minority groups, called "general electors", had three communal seats in Parliament, which were contested by the United General Party and the General Voters Party.

Land and resource ownership, and land and resource use, remained a key issue. Who should make the decisions on these and how should these decisions be made, as well as how the benefits should be distributed were key questions. Critical in this was the role of the Native Lands Trust Board (NLTB), which is the trustee of all Fijian-

BEST COPY AVAILABLE

owned land, and the Great Council of Chiefs (GCC), which has the final word on any legislation that affects indigenous Fijians.

The Indo-Fijian parties and their voters

Unlike their Fijian neighbours who had a lot of parties to choose from, the Indo-Fijians remained with the historical question of whether their votes for the communal seats would go to the Labour Party under Mahendra Chaudhry or to the National Federation Party, now led by trade unionist Attar Singh. Some challenges, though, were expected from the breakaway Labour faction and from those Indo-Fijians that had decided to stand under the banner of Fijian parties.

The former ruling Labour party, which overwhelmingly won the 1999 election, continued to bank on its multiracial platform, its express commitment to workers and the poor, and continued strong support in the cane belt areas to see it through. But Labour also faced an uphill battle as the party had recently split in two factions, former Deputy Prime Minister and Labour stalwart Dr Tupeni Baba leading a New Labour United Party made up of members unhappy with the leadership of Chaudhry. How this would affect the number of seats won remained to be seen, as the two parties have similar policies but different personalities. In fact, it can be argued that there are many political parties in Fiji not because people have different policies and ideas but because politicians do not like each other, or are unhappy with each other's leadership.

For Indo-Fijians, the issues were also about their rights in a country many of them call "home". Leaders like Chaudhry and Attar Singh had called the affirmative action blueprints presented by Fijian politicians as 'discriminatory' towards them. They also wanted to see the plight of tenant cane farmers resolved in a satisfactory manner, either through compensation or resettlement schemes. Many were simply concerned with economic and social issues.

Due to the events of 19 May 2000 and following, the focus of political parties prior to the elections was on the 1997 Constitution, affirmative action and land. But, learning from the 1999 elections, in which the Labour party emerged victorious through a manifesto strong on economic and social issues such as removal of value added tax and privatisation, education benefits, housing, land etc., many political parties also released manifestos promising voters economic and social relief.

After a year of debate and discussion on political and constitutional issues, an exhausted and weary public simply seemed deter-

208

mined to see a government committed to addressing good governance, rule of law and economic and social well-being. But security and stability remained in the back of people's minds as the political upheaval of 2000 continued to haunt Fiji.

Elections highlight Fiji's political racial rift

After two years of dramatic changes, Fiji's political landscape changed again when the three-month-old Soqosoqo Ni Duavata ni Lewenivanua (SDL) party won the August 2001 general elections. Led by former interim Prime Minister Laisenia Qarase, SDL won 32 seats in the 71-member Parliament. The Fiji Labour Party, which governed for a year after their overwhelming victory in the May 1999 elections before being deposed in May 2000 by the George Speight-led attempted coup, came in a close second with 27 seats. The Labour Party was always expected to emerge as a strong force after the elections given that its support among the Indo-Fijian voters remained largely intact, and that for the 19 Indo-Fijian communal seats it faced only the struggling National Federation Party and the newly-formed breakaway New Labour Unity Party.

But the SDL's overwhelming win among the 23 Fijian communal seats surprised many as they faced over 10 Fijian political parties and, in winning, SDL completely wiped out well-established Fijian political parties such as the former ruling Soqosoqo Ni Vakavulewa ni Taukei (SVT) party, once led by Sitiveni Rabuka and the Fijian Association Party under former Deputy Prime Minister Adi Kuini Speed. The *Matanitu Vanua* Conservative Alliance, like the SDL only months old, also broke ground winning six seats, including all the communal Fijian seats in Fiji's second largest island Vanua Levu. The party's imprisoned candidate, George Speight, won his seat from his stronghold. The Conservative Alliance stood in support of the 'cause' of the 19 May 2000 coup, namely the paramountcy of Fijian rights and interests, and called for the release of and amnesty for George Speight and fellow leaders of the coup imprisoned on Nukulau island.

The breakaway New Labour Unity Party led by former Labour stalwart and Deputy Prime Minister Tupeni Baba won only two seats and, in essence, only succeeded in undermining the Fiji Labour Party's chances of victory. Baba, who broke away from former Prime Minister Mahendra Chaudhry, is now facing a leadership challenge within his own party with one of their two MPs insisting on being part of Qarase's cabinet.

Analysing the election results

The reading of the 2001 elections can be measured by looking at the victors of the communal seats. Victories in the 25 open seats did not tell much but show that the SDL (like Labour in 1999) benefited from the preferences of the moderate parties who had ganged up against Labour leader Chaudhry.It also emphasised what many had been saying for some time, that the preferences system was flawed, easily corrupted and manipulated by political parties, and that Fiji's voters were still not ready for it. While the policies of the 'Moderates' was closer and more in line with the Fiji Labour Party, they handed victory after victory to the SDL in the open seats when they put SDL before Labour in their last preferences. The SDL won 13 open seats while Labour won 8. The results of the communal seats confirm that the major ethnic groups are clearly politically divided. Indo-Fijians remain strongly with Labour, while Fijians have grouped themselves with the ideals and policies of SDL. Labour and SDL have very different proposals and policies as to how to achieve progress, stability and unity in Fiji. The personalities and ideals among the leadership of the two parties are also strongly opposed to each other. The SDL won 18 of the possible 23 Fijian communal seats, with the other five going to the Conservative Alliance. The Labour party won all 19 Indo-Fijian communal seats.

Even before the results of the elections were known, SDL leader and now Prime Minister Qarase stated that he could not and would not work with Chaudhry. This statement put him in hot water after the elections when he was required under the 1997 Constitution to invite any party that won 10 per cent of the votes to join him in cabinet to form a multi-party government.

The framers of the 1997 Constitution had included the concept of a multiparty cabinet as a way of getting opposing political parties to consult each other in the governing of the nation.

With Labour the only party reaching this 10 per cent threshold, Qarase was obliged to invite the party to join him in cabinet, which he did so, grudgingly pointing out that since their policies were opposed, there was no "sufficient basis for a workable partnership with you in my cabinet".

To Qarase's stunned surprise, Chaudhry accepted the offer, citing in his response that "in a spirit of national reconciliation" he looked forward to working with the SDL to rebuild Fiji, and that "cabinet decision-making in government should be on a consensus–seeking, basis especially with regard to key issues and policies".

210

Qarase, borrowing from Chaudhry's decision in 1999 to exclude the SVT from his government as they had imposed conditions, responded by advising the President that he commanded the majority and the swearing in of his new government should begin. This was immediately done. After successfully negotiating with the smaller parties and independents, including the Conservative Alliance whom he browbeat to drop their demands for amnesty for George Speight and his group, Qarase now had the numbers to form a government.

But pulling the smaller parties and independents in to join him meant the former banker had to give them some ministerial portfolios. If the Labour Party were then to also join him in government with an entitlement to 38 per cent of the cabinet line-up, he would have faced a situation where the SDL would have become a minority in the Cabinet even though they won the election.

In his response to Chaudhry, Qarase stated that the Labour leader had imposed conditions that were unacceptable to him, and would render his government unworkable. Chaudhry responded that he had accepted the invitation to join the Cabinet unconditionally. What irks many observers is that there was no dialogue or attempt at negotiation in the "spirit of the constitution", just a simple offer of invitation, accepted but then rejected.

KANAKY (NEW CALEDONIA)

New government in Kanaky

A new President and Vice-President were elected on 5 April 2001 in Kanaky (New Caledonia), as former President Jean Lèques chose to step down following recent municipal elections. Lèques was replaced by Pierre Frogier, also of the conservative settler party *Rassemblement Pour la Calédonie dans la République* (RPCR). In a significant move, Kanak independence activist, Déwé Gorodé, was elected Vice-President of the Government of New Caledonia, replacing Leopold Joredié of the *Fédération des Comités de Co-ordination des Indépendentistes* (FCCI).

Lèques, the long serving mayor of the capital, Nouméa, was re-elected in municipal elections in March. He announced that he would

prefer to focus on the municipality rather than continue as President of the country, and his resignation meant a change in all eleven government positions.

Déwé Gorodé's election as Vice-President reflected legal and political battles over the last two years to ensure that the RPCR/FCCI majority in the government did not override the need for "collegial" work to implement the 1998 Nouméa Accord (signed in May 1998 between FLNKS, anti-independence RPCR leader, Jacques Lafleur, and French Prime Minister, Lionel Jospin). In the first government established under this Accord in 1999, the RPCR and FCCI had seven members while the FLNKS had four. In the April 2001 vote in Congress, three FLNKS and one *Union Calédonienne* (theoretically a member of the FLNKS pro-independence umbrella) were elected: Roch Wamytan (President of the *Union Calédonienne* UC), Déwé Gorodé, Tino Manuohalalo and Gérald Cortot. The 11-member government further consisted of seven RPCR/FCCI coalition members.

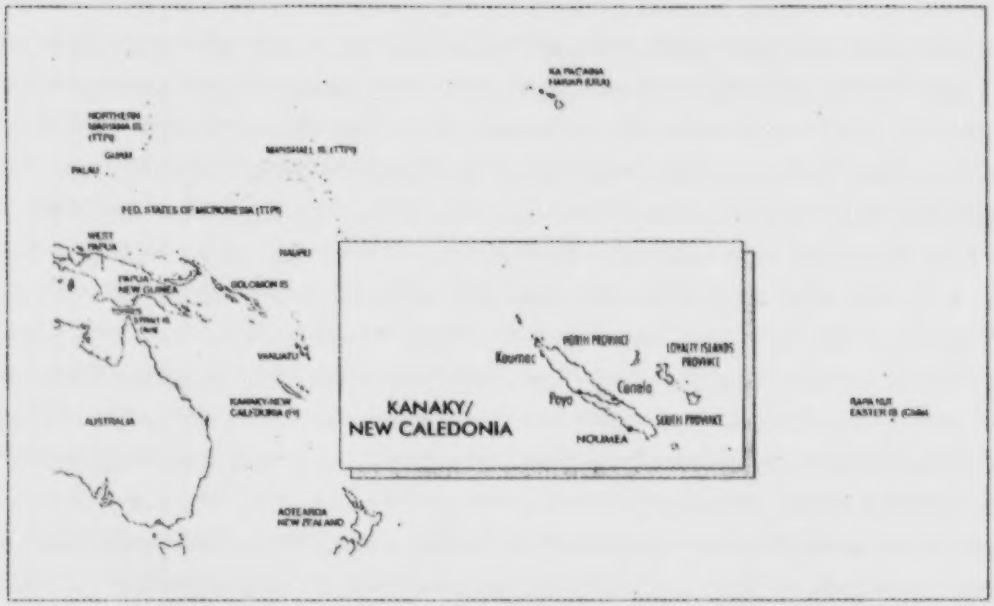
The municipal elections and the composition of the new government reflect the ongoing balance between pro- and anti-independence forces in the country. The election of poet, writer and activist Déwé Gorodé as Vice-President was an important affirmation of her work in the first government and the strength of Palika in the pro-independence coalition FLNKS. It also highlighted the increased number of women in the Congress following the May 1999 elections.

The votes for municipal councils saw a major increase in support for the pro-independence party Palika The other major pro-independence party *Union Calédonienne* lost ground because of internal divisions, leading to a splitting of electoral lists and the loss of two municipalities to the Right (with an LKS-RPCR-FCCI coalition winning in Maré, and the RPCR winning in Poya).

FLNKS boycotts New Caledonia Government

In October 2001, FLNKS decided to withdraw from government and instructed its members to boycott cabinet sessions. The decision was sparked by a ruling in Paris by the French State Council, which invalidated the appointment of a FLNKS as member of government, thus curtailing the representation of FLNKS in the government

The ruling related to FCCI's formal protest against the election of FLNKS candidate Tino Manuohalalo to the new government.



Manuohalalo is a member of the *Rassemblement Démocratique Océanien,* which is made up of Wallisians and Futunians who support independence for Kanaky. FCCI claimed their candidate, Raphael Mapou, had won the same number of votes as Manuohalalo but had lost the election on a technicality. FCCI's anger over the election in part reflects the showing in the March 2001 municipal elections, when they lost their mayoral positions in Yaté, Canala and Belep to pro-independence candidates.

The State Council's decision means that FCCI gains one more seat (it now has eight) and FLNKS loses one of its seats. The tribunal, which is France's highest jurisdiction, did not follow a request that was contained in FLNKS' submission: the pro-independence party's President Roch Wamytan wanted the government to be dissolved altogether.

In reaction to the decision, a special FLNKS meeting resolved that as a result of Tino Manuohalalo's invalidation, Déwé Gorodey, Vice-President, and Roch Wamytan, in charge of customary and traditional affairs would not take part in the government until the stance was reviewed at the FLNKS annual congress.

The decision to boycott by the Kanak independence movement was the culmination of months of protest against failure on the part of its partners in the Nouméa Accord, the anti-independence coalition RPCR and the French State, to uphold the "spirit" of the Accord and implement the principle of "collegiality" and power-sharing in government.

BEST COPY AVAILABLE

SOLOMON ISLANDS

A nation in doubt

The civilian coup of June 2000 literally destroyed the Solomon Island's nation for everyone, the coup leaders included. It devastated its social fabric—people found it hard to trust one another. In itself, the coup almost destroyed the national economy—only small amounts of money became available, there were fewer jobs than before, certainly far less education, health, transport and social assistance. Its most destructive element, however, has been the undermining of people's trust in government—citizens no longer accept this authority.

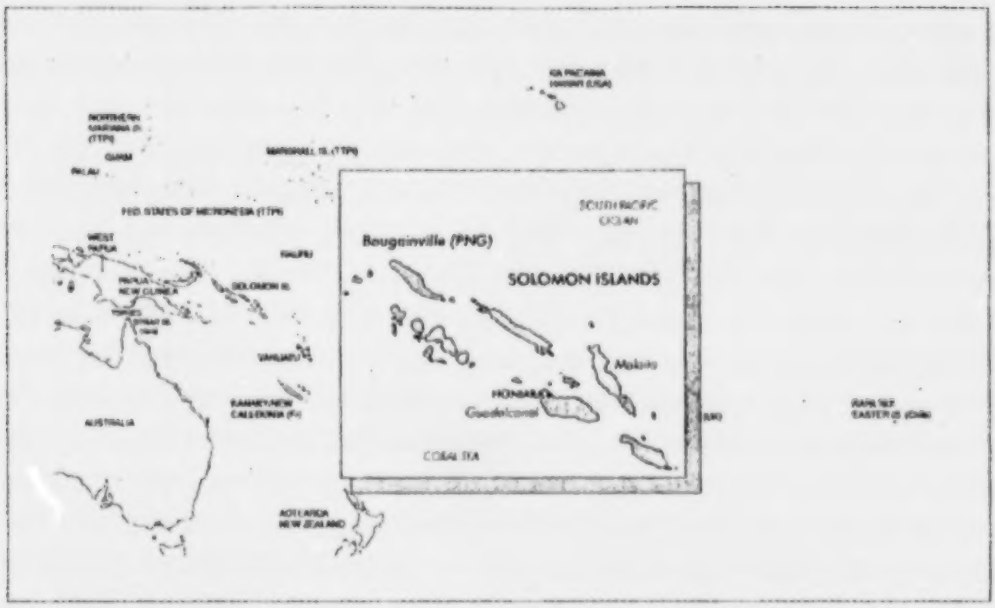
Some of the Solomon Island's elite saw this police-aided civilian coup as a quick way of changing a world that was quickly shifting about them. The Solomon Islands Alliance for Change (SIAC) Government was gingerly pushing for greater transparency, financial accountability and equity investment in development, which were not to their liking. Too many opposition members were beginning to experience a world that was challenging the corruption, mismanagement and outright thievery that had become normal operating practice during past governments. Yet these very same practices made a strong comeback with the new administration. Solomons' basic security remained weak. The police was "requesting" criminals to stop stealing vehicles: cars, buses and trucks. Militants were rearming with guns stolen from the Tangarare armory. Buses and cars, stripped of their number plates, many stolen, were brazenly running along Honiara's streets with little fear that the drivers would be pulled over, questioned and arrested. A former Isatabu militant was arrested and later found brutally murdered at Mount Austin. Although a suspect was quickly arrested, he was released just as quickly and was soon seen walking around freely. The number of criminal acts mounted daily.

This was the security picture and social dimensions that voters faced as they prepared for national elections on 5 December 2001. The last four years have radically changed the Solomons historically from a nation with a great future to one that is in doubt.

Silence greets election of new Prime Minister

National joy at holding an almost incident-free election quickly turned into dismay for many Solomon Islanders as they witnessed newly-elected politicians selling their votes and political stance to the high-

214



est bidder. In less than two weeks, the country once again repeated the deadly process of shooting itself in public. The country's recent history of self-inflicted wounds once more reared its ugly head.

While the whole world watched, dozens of international election observers from the Commonwealth, United Nations, the Pacific Islands Forum and citizens from more than a dozen nations toured polling booths across the nation and officially declared the Solomon Islands' sixth national election "fair and free". In spite of the island's vast ocean distances, scattered remote polling booths and poor transportation infrastructure, the election results took less than three days to complete. However, no sooner had the election results been confirmed by the Governor General than the jockeying for political power took up the total attention of the 50 newly-elected members.

The nation rightfully congratulated itself on a job well done. In spite of the threat of high-powered guns in some constituencies and physical difficulties faced by polling authorities, the International Monitors gave the national election the thumbs up. Although there were some minor incidents of voters unable to find their names on the electoral role, improper sealing of ballot boxes and other small disturbances, on the whole, the task of electing the new parliamentarians went off without any major hitch.

However, many quickly became distressed with the 50 newly-elected members when almost immediately they began to flex their newly-found political muscle irresponsibly. The new parliament saw 18 members from the previous parliament retain their seats, while a

BEST COPY AVAILABLE

whopping 32 new members got elected. It seems evident that a good number of the newly-elected members arrived in Honiara flat broke. They had spent their last dollar campaigning and some had gone into serious debt to win a seat. Although campaign financing regulations stipulate that they stay within the $5,000 bracket, many candidates had spent much more and the political stalemate was a golden opportunity to return some of this investment to their "backers".

In the two weeks that separated the national election and the election of a new Prime Minister, the nation was thrown into political confusion. Five men with various party backing ran for the position. Sir Allan Kemakeza gained 29 votes on the first ballot count and effectively won. But the excessive political shenanigans, the lack of personal integrity and obsessive self-centeredness have seriously damaged the nation in donor eyes and confused the people all the more.

The 2001 electorate, unfortunately, had sent a series of mixed signals. It completely threw out the former government ministers and backbenchers who had practically ruined the country but also voted in others of dubious reputations. It brought back to the house many of the men who had been overthrown in the June 2000 coup but voted in others who had closely aligned themselves with the coup masters.

But it was clear for all who wanted to see that voters across the nation wanted a radical change from the past. That was the primary message. The country had suffered grievously and change for the better was asked for. However, a number of those elected were a throw-back to the past rather than a step to the future.

The people's stunned silence on hearing the election of the new Prime Minister confirms the view that positive change may not be coming for a while but that, once again, "business as usual" will take centre stage.

BOUGAINVILLE

Legal challenges for Bougainville

On August 2001, a peace agreement was signed between the Papua New Guinea (PNG) Government, the various groups that fought in the Bougainville war and the North Solomons' provincial government.

216

The PNG Parliament was adjourned and it was decided to dedicate a special session to discussing the Bougainville peace plans. Prime Minister Mekere Morauta said the aim of the special sitting was to ensure that Parliament was not distracted by other issues and party politics.

In January 2002, the PNG Parliament finally voted in favour of the Peace Agreement and unanimously passed constitutional amendment bills that will pave the way for an autonomous Bougainville Government by the end of the year, and a referendum on independence for the island in 10-15 years. The vote is the first vote on the issue, with the second and final one later in 2002.

Apart from the legal and other constitutional hurdles that first had to be overcome in order to reach this important result, the thorny issues of the disposal of weapons by former combatants and reconciliation had to be addressed. Village chiefs were therefore asked to exercise their authority in carrying out the weapons disposal plan, and traditionally-based reconciliation ceremonies were used to bring victims and perpetrators together in order to heal their communities who, after a decade long civil war, have been left bitterly divided.

The key provisions of the bills are that they will give effect to establishing an autonomous government on Bougainville, and will allow the island to have its own disciplined forces, banking system, its own constitution, and its own aviation and shipping rights. It also allows the island to conduct foreign relations and external migration, and have its own post and telecommunication networks.

PNG and US object to Bougainville lawsuit against Rio Tinto

The Papua New Guinea and United States governments have both opposed the multi-million dollar class action lawsuit brought against mining giant Rio Tinto by Bougainville landowners led by Francis Ona. Bougainville landowners have taken action against Rio Tinto for alleged genocide and environmental damage in operating the giant Panguna copper mine on Bougainville. The lawsuit was mounted in the US Federal District Court before Justice Margaret Morrow in April 2001.

The lawsuit alleges that Rio Tinto, acting in concert with the PNG Government, was responsible for despoiling the environment of Bougainville, committing "various atrocities" and "war crimes", including a military blockade that kept medical supplies from the island as well as killing, bombing, rape and pillage. The action is being mounted

by the legal "czar" of US civil class actions, Steve Berman, a multi-millionaire from successful suits against cigarette-maker Philip Morris.

The PNG Government has been trying to block the lawsuit. Documents show that PNG had warned the United States that relations could be seriously undermined if it allowed the class action to go ahead in the US District Court. It had also warned that the current peace process on Bougainville Island could be derailed by the action.

In an unprecedented move, the US State Department wrote to the judge hearing the case, saying that if the class action suit went ahead, it would affect US relations with PNG. The documents also show that the PNG Government forced its Ambassador to the United Nations, Peter Donigi, and Attorney-General Francis Damem to withdraw their approval for the lawsuit.

On March 25 2002, Justice Morrow dismissed the action brought by the Bougainville landowners with a statement of interest saying further adjudication of the case might adversely affect US foreign policy interests.

WEST PAPUA

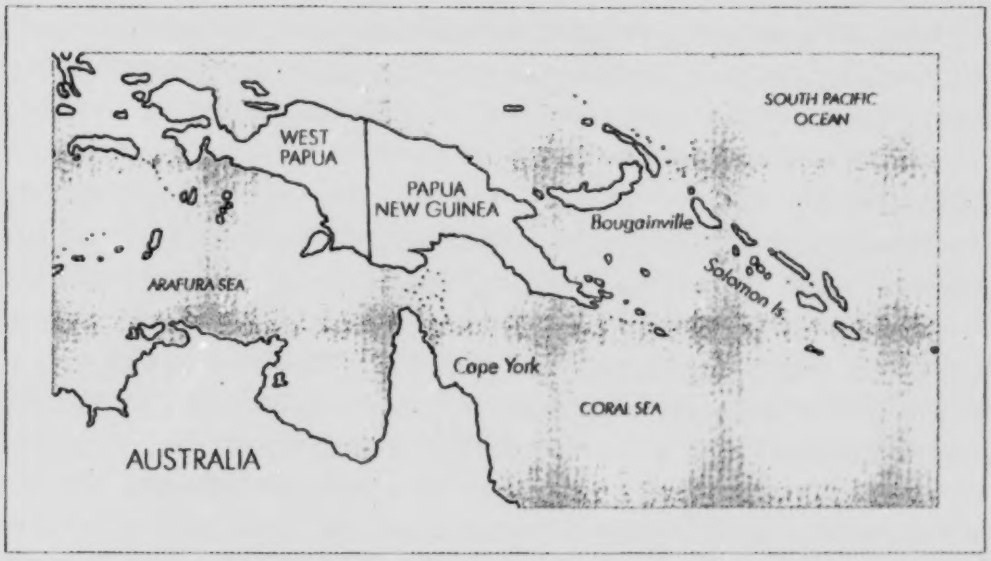
UN officials admit: "1969 Act of Free Choice" was a sham

In November 2001, UN officials who conducted the 1969 vote by tribal chiefs admitted publicly that most citizens of the province covering the western half of New Guinea Island were intentionally excluded.

When the Dutch originally granted independence to the Indonesia archipelago in 1949, they retained control of Papua, arguing it had no ethnic, linguistic or cultural links with the other islands. Unlike Indonesia's mainly Malay inhabitants, Papuans are racially distinct Melanesians. While 85 percent of Indonesians are Muslims, Papuans are either Christians or animists.

The Netherlands announced it would grant statehood to Papua and set up a local legislature on 1 December 1961. Indonesia reacted by launching a series of cross-border incursions. The invaders were easily routed by Dutch marines. But the US administration of Presi-

218



dent Kennedy feared a military defeat could drive Indonesia into the Communist bloc and pressured the Dutch to hand over the colony.

The Dutch eventually agreed and, in 1962, the United Nations was brought in to prepare a "one man, one vote" referendum for self-determination by 1969. Within a year, however, the world body relinquished administration of the region to Jakarta, and left Suharto's military dictatorship in charge of preparing for a democratic plebiscite.

The Indonesians, sensing overwhelming opposition to the takeover, decided to canvass only 1,025 handpicked supporters. The result, not surprisingly, was a unanimous vote for integration. Lobbied intensely by Washington, the UN Security Council endorsed the vote.

"Suharto was a terrible dictator," a former UN official said. "How could anyone have seriously believed that all voters unanimously decided to join his regime? Unanimity like that is unknown in democracies." "It wasn't our most glorious hour," said Brian Urquhart, another retired UN undersecretary general. "It was arranged to have the UN put the seal of good housekeeping on the easiest but not necessarily most democratic way to resolve the problem."

Papua Council rejects autonomy

Opposition to rule from Jakarta appears almost universal among Papuans. Independence activists galvanized by the UN-supervised referendum in 1999 that allowed nearby East Timor to break away from Indonesia and become independent after years of fighting Indo-

BEST COPY AVAILABLE

nesian forces, are demanding a similar plebiscite for West Papua. But the Indonesian Government is adamant about holding the region, the nation's biggest and home to rich natural resources.

The Indonesian Parliament passed a special autonomy bill for West Papua on 23 October giving the much neglected province greater power and revenue, but full independence and human rights remains the main issue for West Papuans.

Meeting on 19-20 October before the bill was passed, the Papuan Presidium Council dismissed the special autonomy provisions as ignoring the aspirations of the Papuan people and showing "no understanding of the real substance of the Papuan question...The enactment of the law [...] is yet another example of the way in which the fate of the Papuan people has been decided by others..."

In a statement released after their meeting, the Presidium Council stated that it "firmly rejects special autonomy for Papua and will wage a peaceful and democratic struggle for the restoration of the political rights and sovereignty of the Papuan people". The Papuan Consultative Assembly and the Second Papuan Congress in 2000 had mandated the Presidium Council to represent the Papuan struggle to uphold their civil and political rights by peaceful means, while giving priority to a dialogue to rectify history, within West Papua and internationally.

As such the Presidium expressed deep appreciation to the leaders and people of the member states of the Pacific Islands Forum for their solidarity and support for the Papuan people's struggle, and again urged the Dutch Government, Indonesia, the United States and the United Nations to honestly and responsibly reconsider their role in the political conspiracy in the 1969 so called "Act of Free Choice" that robbed Papuans of their sovereignty.

Call for non-violence

The Presidium urged for a stop to the intensification of military operations by the Indonesian military and armed resistance by the Free Papua Movement (OPM). While expressing the "highest respect" for the 36-year guerrilla struggle by the OPM for an independent Papua, the Presidium called for an end to armed confrontation. They urged the OPM to work together and press for peaceful efforts, and urged all Papuans to "resist all forms of provocation and the policy of divide and rule and to do everything in their power to strengthen unity". The Indonesian military and police were urged to stop their "habit" of using repressive military operations and

220

adopt a more humane approach that respects the dignity of the Papuan people and their basic rights.

The mysterious killing on 10 November 2001 of Theys Eluay, a prominent pro-independence politician, has, however, added to tensions. Many Papuans accuse the government of responsibility for the death of Chief Eluay, who was found strangled after attending a dinner with Indonesian army commanders.

Papuans lobby for observer status at Forum

Papua Council is seeking observer status at the Forum, especially after the Tarawa Communiqué of October 2000, which for the first time took account of the West Papua issue and the Forum's subsequent decision to accept Indonesia's request to be a Post-Forum dialogue partner.

In July 2001, a West Papuan delegation visiting Fiji as part of a regional consultation with Forum member countries held consultations with the Forum Secretariat and the interim government of Fiji to "discuss among other things, agenda prospects for the upcoming Forum meeting in August to be held in Nauru". Besides consultations at government level, the Papuan delegation also met with the NGO community to update on the current political situation in West Papua and the implications of the ongoing leadership crisis in Indonesia.

When asked whether the acceptance of Indonesia as a post-Forum Dialogue Partner is seen as a threat, Franzalbert Joku, the Presidium's international spokesperson, said that the Papua Council sees the inclusion of Indonesia as a positive move towards peaceful resolution of the West Papuan conflict. The Papuan delegation also acknowledged the importance and long-standing support of the NGO community in advocating Papuan right to self-determination and independence and renewed its call for greater and more active support in the lead up to the next Forum meeting. But while the Papua Council is lobbying for representation at the Forum, Indonesia has called on Forum member countries to be prudent in dealing with the West Papua issue, and strongly opposes the idea of admitting West Papua as an observer "because West Papua was already represented by Indonesia". However Joku warned that the equation would not be complete if Papuan leaders were not consulted over the future of West Papua, hence the need to invite them to the negotiation table.

West Papua's call for independence from Indonesia has gained considerable support among Pacific countries and leaders and will certainly remain on the agenda of the Pacific Islands Forum for the

221

coming years thanks to the support of regional civil society and individuals. In particular, the Papua Presidium Council is hopeful that the Forum will grant West Papua the status of "observer" at its future summits and that Pacific governments, through the Forum, will be persuaded to recognise the West Papuan people's right to self-determination.

GUAHAN (GUAM)

Guam at centre of Pacific military build-up

As in the past, the islands of the north Pacific are a crucial site for US military deployments in the Asia-Pacific region - Kwajalein Atoll in the Marshall Islands is used for US ballistic missile tests and Hawai'i hosts the US Pacific Command and 7th Fleet. A recently released Rand study clearly states that "there will be renewed energy to examine how America will project power and secure a favourable strategic balance in the Asia-Pacific region".

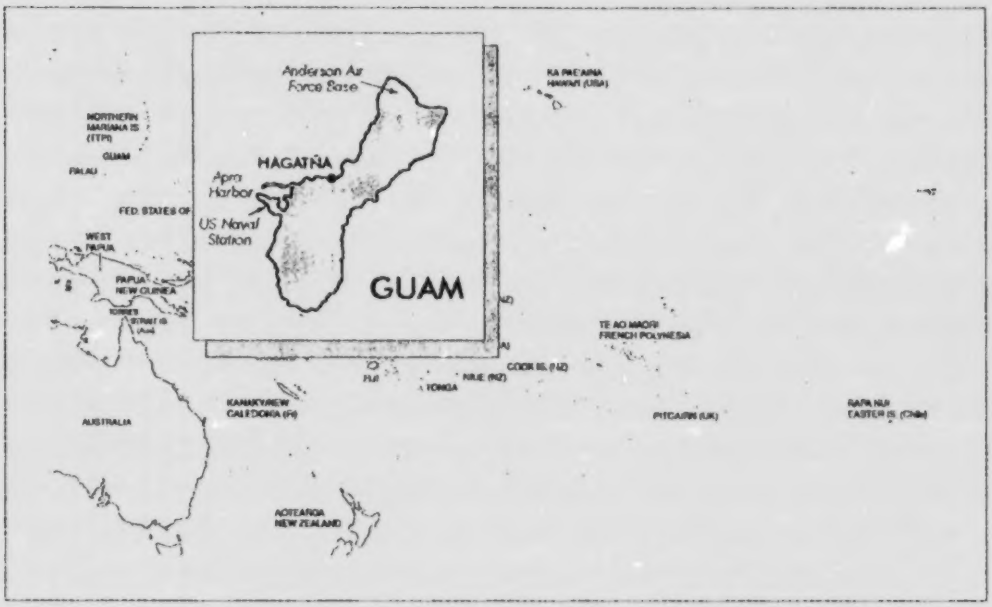
The Rand Corporation report, *"The United States and Asia: Toward a New US Strategy and Force Posture"* released by the Pentagon in 2001, expresses concerns about growing opposition to US troops and recommends shifting US forces towards Guam, the Philippines, South-east Asia and other countries close to Taiwan.

The study recommends a huge Air Force build-up on Guam, adding as many as 200 fighters and bombers to the island's forces. Because of uncertainty about future basing privileges in Japan, the Philippines and Korea, Guam "should be built up as a major hub for power projection throughout Asia".

The report urges that a large stockpile of munitions, spare parts and other equipment should be collected on Guam, sufficient to support deployment of as many as 50 bombers and 150 fighter jets "anywhere in the region". A big Guam build-up is part of an "integrated regional strategy" recommended for the region. Hawai'i could also end up basing more US forces, the study said, if peace is achieved on the Korean peninsula and fewer American troops are needed or wanted there.

There is evidence that this build-up on Guam is already underway, as shown by new military deployments, and military exercises in waters near Guam.

222



New deployments

In August 2000, the US Air Force confirmed that it had moved "an unspecified number" of conventional air-launched cruise missiles to Guam, which air force officials said "will allow the USA to respond more quickly to crises, particularly in the Asia-Pacific region" (*Jane's Defence Weekly*, 6 September 2000).

Guam is used for stopovers by US vessels after military exercises, and during transit to the Indian Ocean. In April 2001, the aircraft carrier *USS Kitty Hawk* visited Guam for flight training exercises and rest and relaxation for more than 5,000 crewmembers.

The US Navy will homeport three Los Angeles class nuclear fast-attack submarines in Guam, starting in 2002. The *USS Corpus Christi* will arrive in April, followed by the *USS San Francisco* in September 2002. The Navy has yet to decide on the third submarine. There will be some military construction for submarine repair and port facilities at Apra Harbour, and the Guam-based submarine tender *USS Frank Cable* and a support squadron will provide maintenance support.

Military exercises

As well as basing US troops, the Pacific is a major area for military war games. In 2001, US Pacific Command held 300 military exercises with 37 countries in the region (*New York Times*, 17 May 2001).

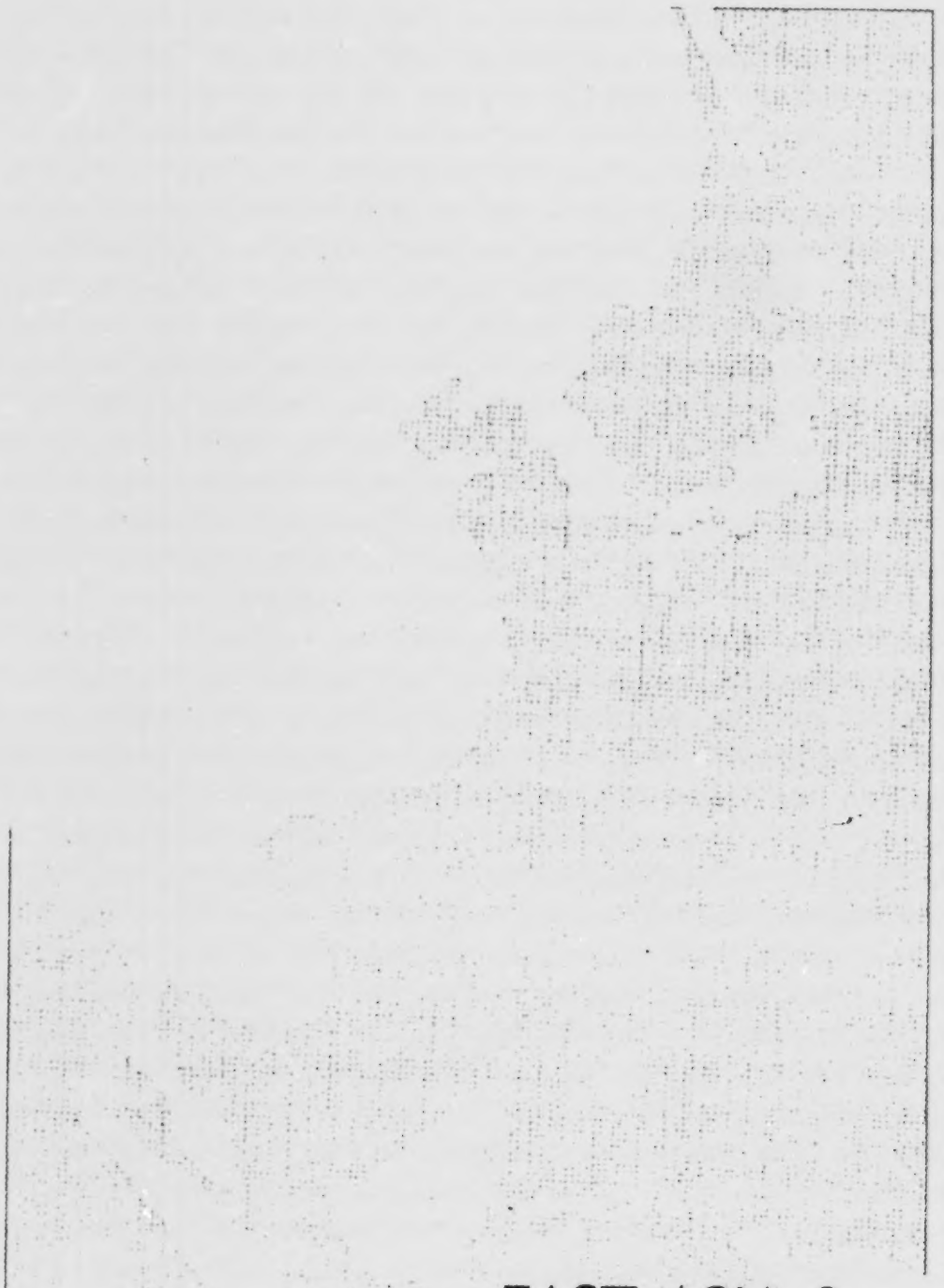
BEST COPY AVAILABLE

In 2002, the biennial Rim of the Pacific military exercise (RIMPAC) will be conducted for the first time in waters near Guam. Last May, Admiral Thomas B. Fargo, commander of the US Pacific Fleet, said the final phase of RIMPAC 2002 would be conducted in the waters off Guam and would conclude with port visits for several navies at the Guam Naval Station (RIMPAC 2000 included participants from Australia, Canada, Chile, Japan, South Korea, the United Kingdom and the United States, involving more than 22,000 military personnel; 50 ships and 200 aircraft took part in the exercise).

In June 2001, the Northern Marianas' representative in Washington, Juan Babauta, suggested that Tinian be considered for sophisticated military operations in the Asia-Pacific region, particularly for intelligence and telecommunication purposes. Tinian was used as a military base during World War II. It was from Tinian that the US launched its atomic bomb attacks on Hiroshima and Nagasaki in Japan.

But officials in neighbouring Saipan have expressed concern that a series of US military bombing exercises in the area of Farallon de Medenilla, an island north of Saipan, has caused serious destruction in the surrounding reef. Farallon de Medenilla has been used for bombing and target practice by the US military, in preparation for interventions in Asian countries and the Persian Gulf. It was used as a training ground by American soldiers who were sent to Kosovo in the late 1990s.

224



EAST ASIA & SOUTHEAST ASIA

BEST COPY AVAILABLE

JAPAN

In late 2000, the Japanese Government submitted the initial and second periodic reports to the Committee on the Elimination of Racial Discrimination (CERD) for the first time since ratification of the International Convention on the Elimination of All Forms of Racial Discrimination on Dec. 15, 1995. The author does not know why the initial and second reports were combined. CERD considered the report in March 2001 in Geneva.

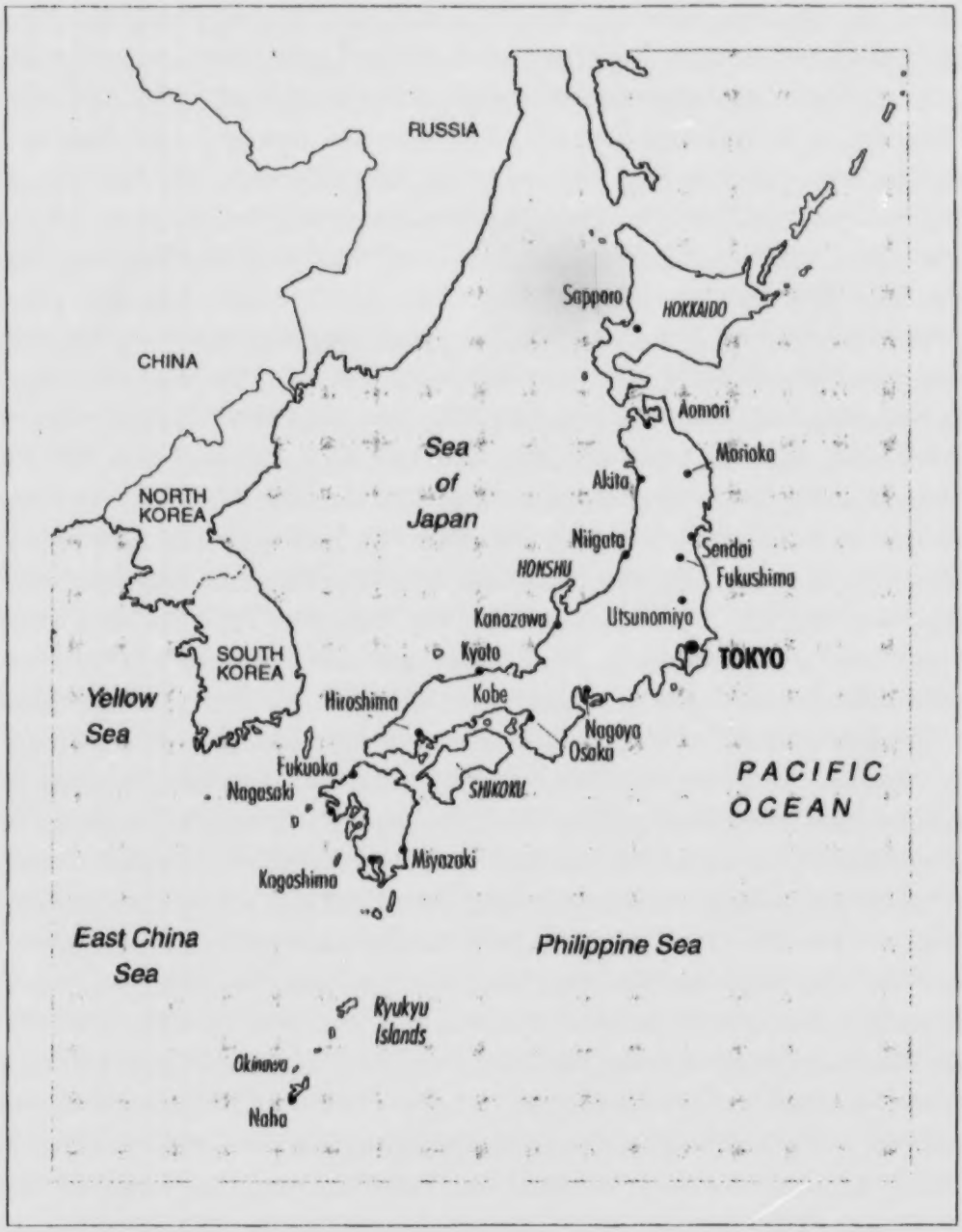
CERD Considerations

The Ainu Association of Hokkaido (AAH) decided to dispatch delegates to the UN Geneva Office to observe the deliberations and to lobby the committee members by providing them with information on the actual situation, feelings and aspirations of the Ainu people.

For the reports, the Japanese Government used the results of the survey that was conducted by the Hokkaido Prefectural Government. To date, the AAH has pointed out that the basic data, such as the population of the Ainu people and the number of victims of discriminatory incidents indicated in such surveys has never been accurate because the sampling system is as follows. The Japanese Government provides the Hokkaido Prefectural Government with the budget for the surveys, and the AAH undertakes the surveys. In reality, each AAH branch organization visits as many member families as possible in its area to interview the members. However, not all the Ainu people are organized within its membership. Some do not want to be members because they live in strong discriminatory circumstances. Also, there is an assumption on the part of the Japanese Government that only few Ainu people live outside of Hokkaido, which is untrue.

One of the greatest changes following ratification of the treaty was the abolishment of the notorious law, the Protection Law for Former Aborigines in Hokkaido, and the enactment of the Ainu Culture Promotion Law in 1997. In its Concluding Observations, CERD asked the Japanese Government to include in the next report what was promoted, achieved, and what remained the same after enactment. This was a very good proposal because it will create an opportunity for a domestic discussion between the Ainu people and the Japanese Government on the implementation of each of the measures defined by the law.

226



CERD also pointed out that there were many differences between the surveys in government reports and the information provided by NGOs. It is hoped that, in the preparation for the third periodic report, the Ministry of Foreign Affairs will build a constructive relationship with the NGOs that are making efforts to combat discrimination.

In the "Comments of the Japanese Government on the Concluding Observations adopted by the CERD on March 20, 2001, regarding the

BEST COPY AVAILABLE

initial and second periodic report of the Japanese Government", the Japanese Government stated as follows:

> *Those who live in Okinawa prefecture or natives of Okinawa are of the Japanese race, and generally, in the same way as natives of other prefectures, they are not considered to be a group of people who share biological or cultural characteristics under social convention, and therefore, we do not consider them to be covered by the Convention.*
>
> *With regard to "the population in Okinawa seeks to be recognized as a specific ethnic group and claims that the existing situation on the island leads to acts of discrimination against it" in paragraph 7:*
>
> *1) We know that some people claim that the population in Okinawa is a different race from the Japanese race; however, we do not believe that this claim represents the will of the majority of the people in Okinawa. Also, as described in 1(2)(a), those who live in Okinawa prefecture or natives of Okinawa are of the Japanese race, and they are not generally considered to be a group of people who share different biological or cultural characteristics from the Japanese race.*

The Japanese Government was mistaken to write, "We know that some people claim that the population in Okinawa is a different race from the Japanese race". They claim that they are an indigenous people of Japan. The Japanese Government also wrote, "they are not generally considered to be a group who share different biological or cultural characteristics from the Japanese race." However, the government was not clear as to who considers this to be so. The Japanese Government uses the terms "race" and "ethnic group" as if there were no differences between them.

Furthermore, discussing "biological and cultural characteristics" in the same phrase also indicates that the government does not understand the differences between racial and ethnic groups. The term "biological characteristics" should be used to refer to racial difference and "cultural characteristics" should be used to refer to ethnic difference. This is not only confusing but also has to be pointed out as a great misunderstanding that allows the government to avoid declaring Okinawans as an indigenous people of Japan. Our friends from Okinawa only ask to be recognized as an indigenous people; they have never insisted that they are a different race from the Japanese.

In the comment, the Japanese Government uses the term, "*they are not generally considered*", which is not a correct translation when

228

compared with the comment in the Japanese language version. In the Japanese version they use *"shakai-tsunen-jo"*, which means "in a general social sense". This means that mainstream Japanese nationals do not regard the Okinawan people as different from them but as belonging to the same ethnic group. It is quite strange that the majority of Japanese nationals should decide which ethnic group is indigenous and which is not. This is a way of oppressing indigenous peoples that is common around the world.

Despite the enactment of the Ainu Culture Promotion Law, the Japanese Government has not clarified whether or not they recognize the Ainu people as an indigenous people of Japan. The text below illustrates this very well. It is taken from a document that was mistakenly passed on to a Japanese NGO and includes paragraphs that were later deleted. It shows the government's attempt to suppress any mention of the Ainu people as an indigenous people of Japan.

14. *In relation to "the Committee recommends the State party to take steps to further promote the rights of the Ainu, as indigenous people", in paragraph 17:*

1) *As is incorporated in the Basic Policies on Measures for the Protection of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (Prime Minister's Office Announcement No. 25 of September 18, 1997), in Japan, the Ainu, who lived in Hokkaido before the arrival of Wajin[1] at least at the end of medieval times, have been recognized as a race that has original traditions and that developed a unique culture including the Ainu language, which is based on a different linguistic system from the Japanese language, as well as original manners and customs.*
2) *However, since there is no fixed international definition of the term "indigenous people", the question of whether the people of Ainu are actually "indigenous people" in the sense mentioned above needs to be examined carefully.*
3) *At any rate, in order to smoothly promote the Utari welfare measures, which are implemented by the government of Hokkaido Prefecture for improving the social and economic status of the Ainu people, the Japanese Government established the Joint Meeting of the Ministers concerned in the Hokkaido Utari Measures in May 1974 and has been striving to enhance the various measures while keeping close contact among the related ministries. In addition, the Japanese Government is engaged in various schemes relating to the Ainu people, such as advancement of measures for promoting Ainu culture as well as disseminating knowledge and raising awareness of the Ainu* tradi-

229

tion among the public, based on the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (Law No. 52 of May 14, 1997) that was established for building a society in which the racial pride of the Ainu people is respected and having the Ainu culture and traditions contribute to development of diverse culture in Japan.

15. *In relation to "the State party is also encouraged to ratify and or use as guidance the ILO Convention 169 on Indigenous and Tribal Peoples", in paragraph 17:*

Since the ILO Convention includes many provisions other than the protection of workers, which is mandated to the ILO, and the Convention still includes provisions that conflict with Japan's legislation, the Japanese Government abstained from the vote for adoption of the Convention at the International Labor Conference. The Convention is considered to include too many difficulties for Japan to ratify it immediately.

Discriminatory statements by three politicians of the Liberal Democratic Party

On July 2, 2001, two very influential politicians, Mr. Takeo Hiranuma, the Minister of Economy and Industry, and Mr. Muneo Suzuki, the former Chief of the Hokkaido & Okinawa Development Agency, both made discriminatory statements on the same day.

Mr. Hiranuma stated in his speech in Sapporo, the traditional domain of the Ainu people, that it was because Japan was a mono-ethnic country that the economic rehabilitation following World War II had been so smooth and quick. He was displaying the same ignorance as former Prime Minister Nakasone, who stated in the 1980s that Japan was intellectually excellent because it was a mono-ethnic country, unlike the US, which included Hispanic people. He did not know of the enactment of the Ainu Culture Promotion Law or other measures implemented by the government, despite being a member of the Cabinet. This indicates the intellectual level of Japanese politicians.

Mr. Suzuki, in a press conference at the Club of Foreign Correspondents in Tokyo, stated that the Ainu people were completely assimilated into the Japanese. He meant they were not different from Japanese nationals in that the Ainu people spoke Japanese and attended common Japanese schools. He is from Obihiro City,

230

Hokkaido and has some Ainu friends. He knows well of the activities of the AAH Obihiro branch in terms of passing on their tradition, worship, and culture (such as dances, songs, the Ainu language, rituals and art crafts) in order to rebuild their identity as an ethnic group. Even so, Mr. Suzuki neglects such efforts and denies the significance of those activities.

The AAH, the most comprehensive organization of the Ainu people, sent petitions to the two speakers. However, it failed to make it clear to the public as to why those statements were discriminatory against the Ainu people. It is sad that the content of the discussions between the AAH and the speakers has not yet been made public, not only to members of the AAH but also to the general public.

Mr. Omi, the current Chief of the Hokkaido & Okinawa Development Agency, made an additional discriminatory statement several months later. He also stated that Japan was a mono-ethnic country. If the incidents related to the former discriminatory statements by Mr. Hiranuma and Mr. Suzuki had been sincerely settled, this would not have happened again.

Note

1. The Wajin who came from Honshu Island were the first Japanese settlers on Hokkaido. (Editor's note)

CHINA

China and Xinjiang in the wake of September 11

Last year's fall-out in Afghanistan has put China in a difficult position, but it has also given the Chinese leadership more room for manoeuvre against what they characterize as terrorist activities in Xinjiang, China's huge westernmost province, whose official name is Xinjiang Uighur Autonomous Region. China had retained friendly ties with the Taliban regime and had developed lively trading links with

231

Afghanistan, without recognizing the regime diplomatically. At the same time, China was worried that Afghanistan was serving as a training ground for Uighurs who wanted to fight the Chinese rule in Xinjiang. And China's worries were not unfounded. Western news media had, on several occasions, interviewed Uighurs who had come from China to obtain military training in bin Laden's camps.

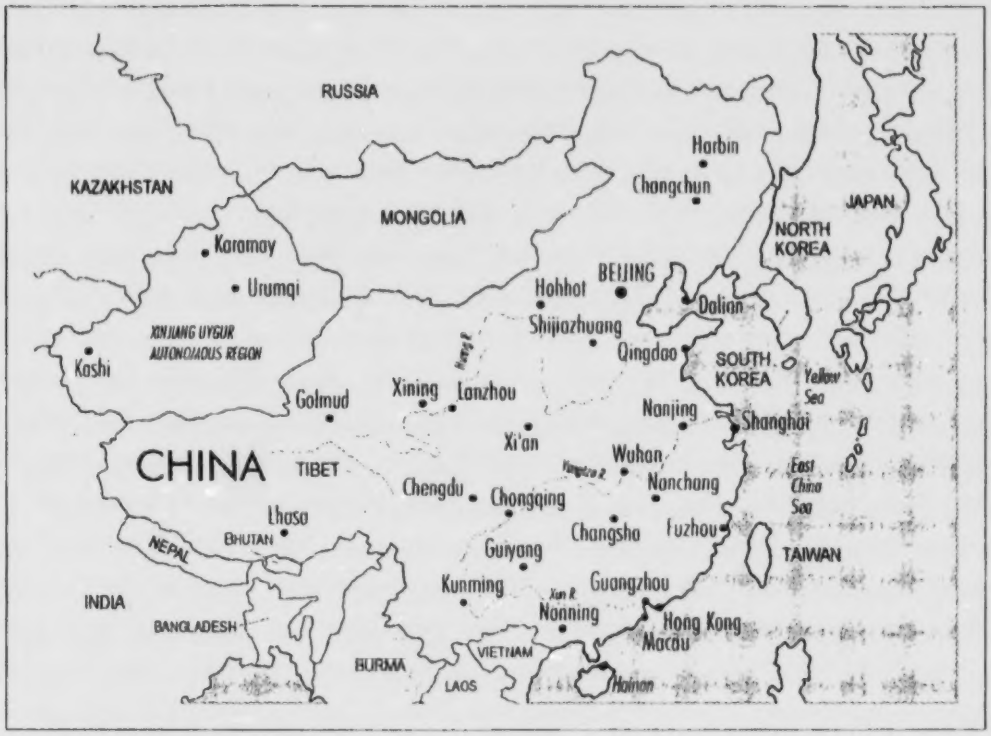
On a strategic level as well, September 11 has led to a realignment in Central Asia. The cooperation of the so-called "Shanghai-6", made up of Russia, China and four Central Asian states (Kazakhstan, Uzbekistan, Kyrgyzstan and Tajikistan), may be seen as an effort by Russia and China to keep the region under control and counter American influence. But following September 11, Kazakhstan, Uzbekistan and Kyrgyzstan gave the US an opportunity to gain a military foothold in the region by promising the US bases, overflight rights, intelligence sharing, etc. Uzbekistan in particular showed their discontent with the Shanghai-6, formally called the Shanghai Organization for Cooperation (SOC), by staying away from an emergency meeting of the six states in the Kyrgyz capital Bishkek in October last year.

The Chinese government was quick to exploit the new front against terrorism for its own purposes. By September 19 last year, the Chinese Minister of Public Security, Jia Chunwang, had already stated that China was committed to the international battle against terrorism. Then, in October 2001, the Chinese Foreign Minister, Tang Jiaxuan, stressed in a meeting with the American Assistant Secretary of State, James Kelly, that China was battling against what he called "East Turkistan terrorists". This is a terminological *volte-face* from the Chinese side, who until then would not utter the name "East Turkistan" out loud. The intention was clearly to link those who use this term to terrorist activities.

In a report that was released in January 2002, the Chinese government blamed an organization called the East Turkistan Islamic Movement for more than 200 terrorist attacks over the last ten years or more. The report furthermore stated that, since the late 1990s, Osama bin Laden, in cooperation with other Central and West Asian terrorist groups, had trained groups of militants who had returned to Xinjiang and set up secret cells of resistance to Chinese domination.

The Chinese campaign against ethnic unrest in Xinjiang is by no means new. A campaign of "high pressure, strike hard" has been going on for the last five years. But curiously, in several cases, the crackdowns have been against groups whose leaders, in the Chinese news dispatches, are named by their Chinese names. This has led some commentators to wonder if the Chinese authorities wanted to

232



blame the Moslems for criminal activities, while they are actually cracking down on Chinese-led criminal gangs.

In March 2002, Amnesty International published a report on the situation in Xinjiang which stated that China had, over the past six months, detained several thousand of people, closed mosques, and required key community leaders, including imams, to attend classes for so-called political education. In the report, Amnesty accuses the Chinese government for using the yardstick of "terrorism" for any mild form of protest against Chinese misrule of the region.

TIBET

After more than 50 years of Chinese occupation, Tibetans are still being denied their fundamental right to self-determination. As inhabitants of an occupied country, which is increasingly being colonized by China and in which the number of Chinese settlers continues

BEST COPY AVAILABLE

to grow, the Tibetans share many characteristics with indigenous peoples the world over. Regarding themselves as an occupied nation, most Tibetans want the return of their former independence. The Dalai Lama's continued efforts to enter into dialogue with the Chinese government on the issue of Tibet's future have not been successful although he is asking for less than independence.

Ongoing human rights abuses

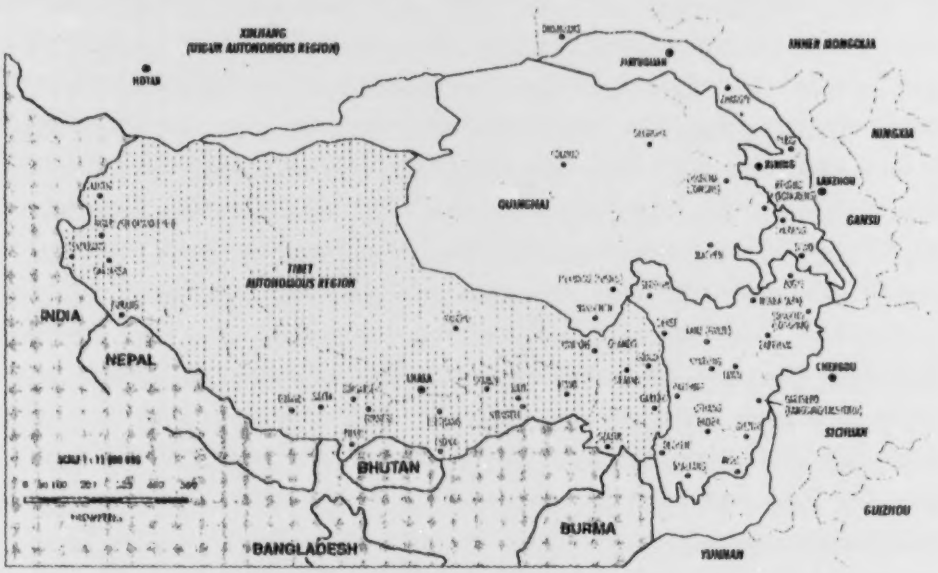
China has taken advantage of the 11th September incident to justify internal repression and to step up government actions against those it labels "separatists", including Uighurs and Tibetans. It remains to be seen whether this will increase the number of human rights abuses in Tibet. During the "strike hard campaign" of the last couple of years, security has already been tightened and the number of death sentences increased. In Tibet, the campaign has primarily been directed towards "political crimes".

In 2001, China's continued and widespread human rights abuses were a central feature of international opposition to its Olympic bid for 2008 and to its accession to the World Trade Organization (WTO). Ignoring world opinion, the Olympic selection panel and members of the WTO sanctioned China's well-documented abuses against its own populace and in occupied territories, including Tibet.

At the 57th meeting of the Human Rights Commission in Geneva, China blocked a debate on the current human rights situation in Tibet and China. However, 30 out of 53 of the member states either voted against China's "no action motion" or did not vote. The EU and like-minded Western nations did not sponsor the USA's resolution on China.

Two Tibet NGOs, the International Campaign for Tibet and the Tibetan Centre for Human Rights and Democracy, participated in the World Conference Against Racism in Durban, South Africa in September 2001. This was the first time that NGOs involved with Tibet were accredited by ECOSOC to participate in a UN conference.

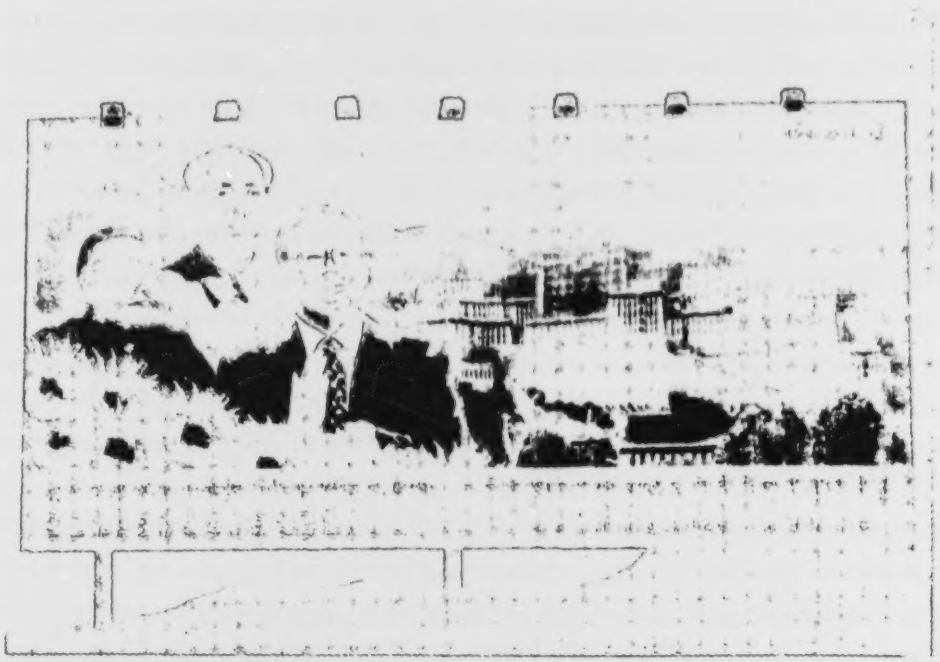
In June 2001, the Fourth Tibet Work Forum was held behind closed doors in Beijing. This high-level meeting placed top-down "economic development" and stability over all other freedoms and rights of the people. Brushing aside the accepted norms of civil and political rights as "Western notions", China continues to call on cultural relativism to justify its human rights abuses. While still claiming that economic development supersedes all other rights, China ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in



Tibet Autonomous Region

Areas with Tibetan Autonomous Status in Quinghai, Gansu, Sichuan an Yunnan Provinces

Additional territories claimed by the Tibetan Exile Government



Placard in Lhasa showing the Chinese conception of the 50 years celebration of "The peaceful liberation of Tibet" in 1951. Deng Xiaoping, Mao Zedong and Jiang Zemin with the Potala Palace and a typical Tibetan landscape as background. Photo: Vivi Walter

BEST COPY AVAILABLE

February 2001. The International Covenant on Civil and Political Rights (ICCPR) remains to be ratified more than three years after China became a signatory to the document. At the heart of these two international covenants is the right of all peoples to self-determination - to freely determine their political status and pursue their economic, social and cultural development. Throughout China's domination over Tibet's political, economic, social, cultural and religious life, there has been a total disregard for the Tibetan people's right to self-determination.

Development, marginalisation and repression

Tibetans continue to be denied their right to livelihood in their own country. Nomads are, for example, facing excessive taxation and fencing of grasslands, which may eventually destroy their traditional way of life. Tibetans in urban areas experience severe discrimination and a lack of opportunity in relation to employment and business. One of the greatest threats to traditional Tibetan livelihoods is the ongoing environmental destruction caused by China's intensive exploitation of resources, from which very few benefits flow back to the Tibetan people.

China claims to be boosting Tibet economically but policies and infrastructure are designed to consolidate Chinese control over the region and benefit Chinese migrants to the detriment of the Tibetan population. Not only is there an official neglect of their basic needs but Tibetans are not consulted on, or meaningfully involved in, the development of their country. The influx of Chinese settlers perpetrates discrimination against Tibetans, particularly in the urban areas. This includes a wide-ranging bias in employment with preference given to those fluent in Chinese and preferential treatment of Chinese migrants.

In 2001, the construction of the controversial railway between the capital Lhasa and Golmud in Qinghai began. Tibetans fear that the railway will further facilitate the economic integration of Tibet into China and increase the number of Chinese settlers in Tibet. Chinese, primarily Han, already dominate the population in major urban centres. The construction of the railway is part of China's "Western development programme", which not only aims at boosting the economy of the poorer regions but also at integrating them further into China.

The Chinese authorities have introduced Chinese as the medium of education in Tibetan primary schools. Tibetan was the medium in approximately 95% of the schools until recently. The level of educa-

236

tion continues to be low among Tibetans, partly because many more remote areas do not have schools and parents are reluctant to send children to boarding schools, and partly because many parents cannot pay the school fees. A considerable number of children are sent across the border to the Tibetan exile community in India each year in order to secure them a proper Tibetan education. The new education policy in China has led to the closure of all country-level teacher-training colleges in Tibet's Autonomous Region (TAR). Consequently, more and more Chinese teachers are being employed.

The repression of Tibetan Buddhism in Tibet has reached new heights. In addition to the prohibition against possessing a picture of the Dalai Lama, the prohibition against celebrating his birthday was severely enforced in 2001. In at least two cases, monasteries - Serthar and Yachen - in eastern Tibet were partly destroyed by work units. The destruction has especially affected the houses of religious practitioners, who did not originate from the region. Thousands of practitioners, including Chinese Buddhists, have been prohibited from continuing their religious education. In Lhasa, the young Pawo Rinpoche[1] from Nenang monastery near Lhasa was forced to leave his monastery as a consequence of the Karmapa's[2] escape to India in January 2000. In many other cases, monks and nuns have been expelled from their monasteries or their education obstructed by work units and regulations. It is increasingly impossible to pursue a full Buddhist education in Tibet.

China celebrated the 50th anniversary of its "peaceful liberation" of Tibet during the summer of 2001. As a symbol of the "liberation", a 37 metre high monument representing an "abstraction of Mount Everest" was erected on a prominent spot in front of the Dalai Lama's old winter palace, the Potala in Lhasa. Several thousand Tibetans were asked to attend a ceremony on the square in front of the Potala to celebrate the "liberation" of Tibet, which for them symbolizes the loss of their freedom. At the same time, most Tibetans were told to stay at home and security precautions were extremely tight.

The number of Tibetans in prison for political reasons continues to be high. According to some sources, the number of political prisoners rose to 254 in 2001. The 11th Panchen Lama, now 12, is still under house arrest and international human rights organisations are not allowed to visit him. Chadrel Rinpoche, who was in charge of the mission looking for the Panchen Lama and who was imprisoned in 1995, was not released in 2001 although he had served his 6 year sentence. Several deaths have occurred among prisoners, including a 28 year-old nun, who was serving the last year of a 10 year prison

237

sentence and a monk in his early twenties who was arrested while attempting to flee Tibet. During the "strike hard" campaign at least 6 Tibetans were executed in TAR.

The Chinese authorities claim to have arrested approximately 2,500 Tibetans trying to cross the border into Nepal in 2001. Approximately 2,500 Tibetans manage to escape to Nepal every year but this year security controls have been tightened partly due to the state of emergency in Nepal. Nepalese border police send an increasing number of Tibetan refugees back into the hands of the Chinese border police. Tibetans do not have refugee status in Nepal. They are expected to continue into exile in India after a short time in the refugee reception centre in Kathmandu. The authorities regard foreigners in Nepal without a valid visa as illegal. The Chinese authorities have become increasingly reluctant to provide Tibetans with legal papers for Nepal.

Notes

1 "Rinpoche" is an honorary title meaning "precious". It is often used for Buddhist teachers (lamas), and for heads of monasteries.
2 The Karmapa is the head of one of the four Tibetan Buddhist kagyupa school and is regarded as the third in the overall hierarchy of Tibetan Buddhism.

TAIWAN

Indigenous peoples in Taiwan have lived through many regimes of change, from the Chin Dynasty and Japanese colonization to the present day. In the first 50 years of the current regime, the KMT (KouMinTang, the Nationalist Party) was the only ruling party. The KMT had no real indigenous policies but rather pursued assimilationist programs. And under its superficial democracy, all it did was to nurture a token "indigenous elite".

The present indigenous movement in Taiwan started in the late KMT era. Like many other activists in Taiwan, the protagonists of the indigenous movement first joined a "non KMT" stream of political dissidents, later gaining a certain affinity with the opposition party, the

Democratic Progressive Party (DPP). In 1999, when DPP candidate Chen Shuibian (now president) was campaigning for his presidency, several indigenous activists organized to encourage him to sign the "Treaty of A New Partnership Between the Indigenous Peoples and Government of Taiwan" (the Treaty) with representatives from different indigenous communities. Signing this treaty, President Chen promised to promote the autonomy of indigenous peoples. Since then, autonomy, a decades-long dream, has finally been included on the government's agenda.

New partnership and DPP government

Chen stepped into office for his 4-year term in May 2000. Following his promise made during the campaign, in the Guiding Principle of Government 2001, his prime minister included "mapping out indigenous autonomy" and "investigating and recovering indigenous traditional territories" on his agenda. The head of the Aborigine Peoples' Council (APC, highest administrative body for indigenous affairs) was also assigned to Yohani Iskakavut, who has long been an indigenous activist and one of the indigenous representatives who signed the Treaty.

In his 18-month term of office (from May 2000 to December 2001), Yohani focused on several important issues, such as the Draft Act on Indigenous Self-Government, Indigenous Language Proficiency Test, Investigation of Traditional Territories and the Revival of Pingpu Communities (the highly assimilated indigenous communities on the plains). Although indigenous activists continue to question whether it is appropriate for APC to predominate in the design of indigenous political systems, and although no satisfactory answer has yet been found, indigenous autonomy is, at least, no longer an illusion. Ideas on autonomy have become more concrete during the course of all these debates.

BEST COPY AVAILABLE

The cabinet reshuffle after the parliamentary election

One thing that should never be forgotten is that the present situation is the result of negotiations between indigenous activists and a political party dominated by the majority Han people (descendents of Chinese settlers). This means that the agreement can be reconsidered by both sides whenever political realities change, and that the fruit of indigenous activists' endeavours may not last long.

At the end of 2001, elections for members of parliament took place. Although eight seats are reserved for indigenous representatives, it is doubtful as to whether this ensures proper representation of Taiwan's indigenous peoples. The fact that indigenous people belong to different communities is generally recognized. However, except for the APC, these communities mean nothing in the general political system. Instead of recognizing the diversity of indigenous peoples (more than ten groups are recognized by APC), a simple division into two groups, the Mountain Indigenous People and the Plains Indigenous People, has been made, which reflects the assimilationist mentality that still prevails among the ruling Han people. This reservation of eight parliamentary seats does not allow for the representation of all indigenous communities. The seats are allocated according to the ridiculous categorization of mountain or plains indigenous peoples. Another worrying aspect of this doubtfully "democratic" system is that the candidates need more than 7,000 votes in order to obtain a seat in parliament. However, there are fewer than this number of qualified voters in six APC-recognized indigenous communities. Although President Chen also promised a national representative for each indigenous community in the Treaty, he has so far paid only lip service to this.

Due to competing political interests, the idea of autonomy and representation was left far behind in the election campaign. The election resulted in ten indigenous members of parliament (eight reserved seats and two from the party list) who, however, represent only three major indigenous communities. The results once more indicate that, under the existing "democratic" system, most indigenous communities have no chance of getting involved and being represented. Furthermore, given the party nomination system, the indigenous elites are highly dependent on political parties dominated by Han people, which means these individuals may be more concerned with their own political status within their party than with the fight for the rights for their people.

With regard to APC, the government's administrative institution responsible for indigenous affairs, the DPP government, which made

240

promises to indigenous communities in order to gain their support, initially did appoint an indigenous activist to the position of head of APC. But when the cabinet was reshuffled in accordance with the new parliamentary composition of January 2002, given the upcoming presidential elections in 2004, the DPP assigned the position to a KMT member. This person belongs to an indigenous elite that has been "brought up" by the KMT. Although he was a mayor in a county with a large indigenous population for eight years, he showed little interest in the most pressing indigenous issues, such as self-government, land claims, etc. Accordingly, the work left unfinished by the previous APC leadership may again be postponed indefinitely.

In the late KMT era, indigenous activists selectively cooperated with the DPP, and the DPP showed some openness. But the cabinet reshuffle clearly shows that, given the DPP's desire to remain in power, the country's 1.5% indigenous people are too small a vote bank to provide the DDP with sufficient motive to carry out a more decent and progressive indigenous policy.

Call for a Pangcah local chief: the demand for self-government from the grassroots

Apart from the parliamentary elections, another important recent event were the elections for local chiefs and councillors. The elections were more like a head-to-head fight, since the role of local officials is more relevant to the daily lives of people, and the competition of interests even more severe.

Again, the election system for local chiefs in indigenous regions is no less questionable than that of indigenous members of parliament. With the same assimilationist mentality, the indigenous regions are divided into two kinds of administrative areas, the Mountain Xiang (a xiang is the lowest administrative body) and the Plain Xiang. The positions of local chiefs in Mountain Xiangs are reserved for their indigenous inhabitants, but the Plain Xiangs are without such reservation. So under the existing political system Han settlers have long since replaced the indigenous headmen in Plain Xiangs. Lacking an understanding of indigenous culture, the local Han chiefs very often deny or ignore the needs and rights of the indigenous inhabitants.

During the elections for local chiefs in early 2002, a movement to gain a Pangcah local chief was pushed to the fore by some Pangcah teachers in Fongbin Xiang. This is a Plain Xiang, in which 70% of the population is indigenous and most of them belong to the Pangcah community, the

largest indigenous community in Taiwan. And yet for the last half century, not one local chief in Fongbin has been of Pangcah origin.

Stimulated by fierce debates on self-government among young Pangcah indigenous activists and local people, and assuming that a Pangcah candidate not belonging to any political party could be found, these Pangcah teachers from different Plain Xiangs organized to call for a Pangcah local chief in Fongbin.

Such a demand is in itself a compromise with the existing political system. The movement did not aim to radically transform the political system, nor did it ask to change the questionable constituency that has long existed. It merely supported the idea of an indigenous community member taking up the position, and it called for more participation of Pangcah members, and for promotion of indigenous self-government in the campaign.

Although, in the end, a Han candidate won the election once again, the local people had for the first time experienced a Pangcah nationalist mobilization. Under the present party system, the indigenous political elites have limited opportunity or willingness to promote the idea of indigenous autonomy fully. The demand for autonomy and the organization of the grassroots will no doubt form extremely important foundations on which to support and cooperate with the indigenous activists in future struggles.

Conclusion

Autonomy, self-determination or self-government have always been the issues promoted by indigenous activists of different generations in Taiwan. But the debates long revolved around mere concepts. Indigenous activists tried to grab the chance offered them by the present political situation, by manipulating the relations between different political parties as well as their own relations to different parties. They did receive a positive response from the DPP in the previous presidential contest, but the upcoming presidential elections in 2004 have caused things to change. Driven by a desire to stay in power, the DDP has to weigh up the possibility that a progressive indigenous policy might offend its Han voters against the comparably few votes it may gain from indigenous supporters. The recent cabinet shuffle was actually no more than expected.

It cannot as yet be said whether the new cabinet will carry on addressing the issues proposed by activists and promised by President Chen in the Treaty. But it is very likely that electoral considera-

tions and tactics will ultimately prevail over the commitments made when signing the Treaty, a commitment to redress and compensate for the mistreatment of indigenous peoples and the errors committed by previous Han rulers. Indigenous activists may not have the chance to manipulate party politics as they have done in the past. The test now will be to see whether indigenous activists can mobilize and cooperate with the grassroots in order to gain a better bargaining position with the Han-dominated political parties in the future.

PHILIPPINES

Much hope was generated among indigenous peoples in the Philippines and their supporters by the promulgation of the Indigenous Peoples Rights Act (IPRA) in 1997, during the presidency of Fidel Ramos. The bubble immediately burst, however, with glitches and clashes in setting up the National Commission on Indigenous Peoples (NCIP) tasked to spearhead implementation of the IPRA, Congress' passing (or not passing) of the budget, working out of the relationship with the Department of the Environment and Natural Resources (DENR), and the like. Many of the problems were attributed to a lack of political will on the part of the Joseph Estrada administration at that time, which generally enjoyed popularity among grassroots sectors, and even among the indigenous peoples.

Then along came January 2001 and a change in national leadership, with Gloria Macapagal-Arroyo taking over the reins. As part of her efforts to solidify her government, the new president built upon the tasks upon which Estrada was deemed lacking, among them poverty reduction and the plight of the indigenous peoples.

New President designates Presidential Adviser for Indigenous Peoples' Affairs

In fact, President Arroyo's first executive order established the Office of the Presidential Adviser for Indigenous Peoples Affairs (OPAIPA), which aimed to make the promises of the IPRA concrete. Howard Q. Dee,

243

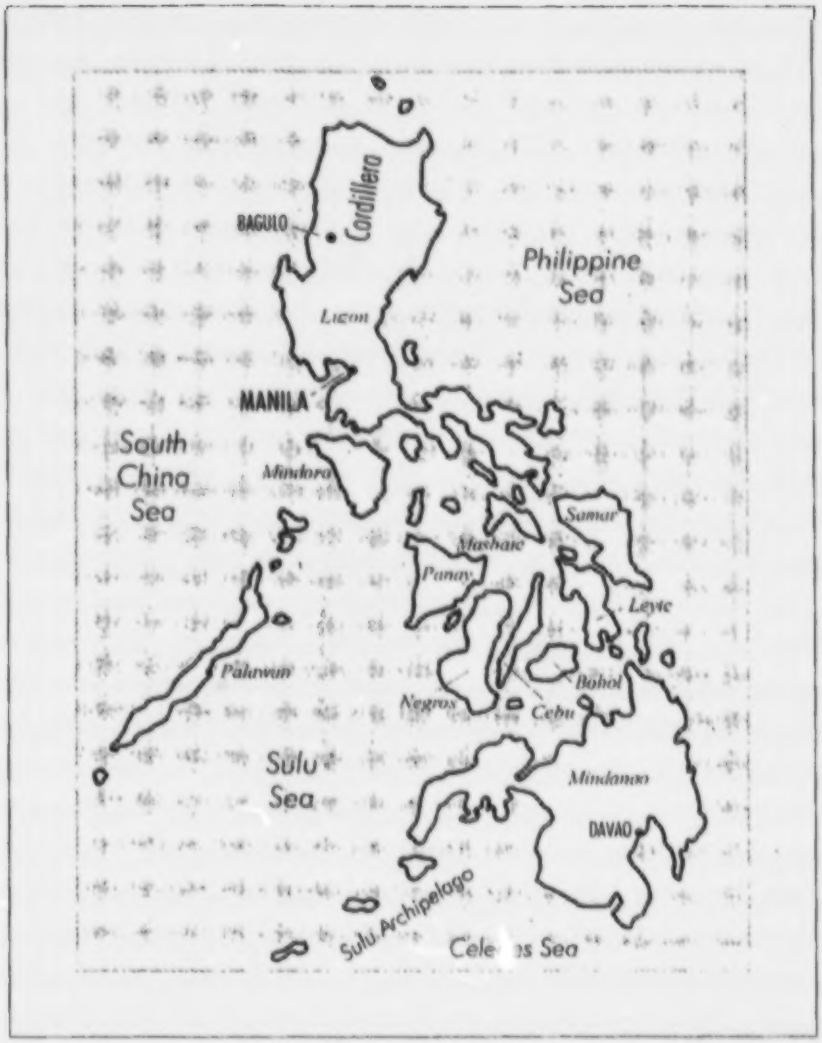
a former member of the government panel for peace negotiations with the Philippine rebels and renowned for his integrity and wisdom, was chosen to head this office. Dee's approach was to harness civil society participation in this endeavour; he called on NGOs, peoples' organisations and indigenous leaders. Together, they decided on the pressing concerns that the OPAIPA should address – the selection of new NCIP Commissioners, formation of the IPRA-mandated Consultative Body to the Commission, review and revision of the procedures for indigenous communities to obtain Certificates of Free Prior and Informed Consent (CFPIC) and Certificates of Ancestral Domain Title (CADT), and a rapid response to emergency IP issues – and formed working groups for these. The timeframe given to OPAIPA was until October 31, 2001, or until a new Commission was formed, whichever came first. Dee held office until the said date, even though the Commissioner to fill the last vacancy was appointed just before that time.

Pressure from various politicians and interest groups was always haunting the OPAIPA. A letter was sent to Malacañang, the presidential palace, signed by twenty Congressmen from Regions 1, 2 and the Cordillera Autonomous Region (CAR) asking the President to withhold the oath-taking of the new commissioners until the "political officials of the region are accorded sufficient time to conduct ample consultation and interaction with the possible appointees."

Selection of new commissioners

Any recommendations would come to nothing without a complete, upright and working Commission. The timing was right in the sense that the terms of most of the Commissioners ended in February 2001 (one of the seven Commissioners was appointed just before the end of Estrada's rule and so his three-year term would not be over until 2003), thus giving President Arroyo a free hand in this matter. This was a task that President Arroyo entrusted to the OPAIPA.

A working group was formed for this purpose. Derived from a series of consultations with indigenous peoples' organisations and indigenous rights advocates, the group came up with a set of qualifications and procedures for the selection of 6 Commissioners. Dee formed a Selection Committee composed of the DENR Secretary, a social anthropologist, an indigenous leader and headed by the Convenor of the National Anti-Poverty Commission (NAPC). The Selection Committee ultimately came up with a shortlist of three candidates for each of five of the seven ethnographic regions (as defined by the IPRA),



from which the President could appoint the Commissioner for each of these regions. No candidates could be presented for the 6th ethnographic region where the DENR Secretary comes from, since he came up with his own candidates. Eventually, President Arroyo exercised her presidential prerogative to make a direct appointment of a Commissioner for that region with whom she had personal ties and one who was not so controversial that indigenous peoples and indigenous rights supporters would make a noise about it.

The selection process illustrated the kind of dynamics that the OPAIPA and its working groups had to contend with. For outputs to be meaningful and practical, continuous balancing had to be accomplished: the IPRA provisions (which could not be easily changed and were a long-term prospect), the guidelines of the

BEST COPY AVAILABLE

Implementing Rules and Regulations (IRR, which may be revised but which, however, may take some time), the varied development approaches of the myriad NGOs involved and, of course, the stands of the various indigenous peoples' organisations and the constraints of a lack of time and financial resources vis-à-vis the desire to be as participatory and broad-based as possible.

By the end of the OPAIPA term, there was great hope in the new Commission since it was, for the most part, comprised of people who had undergone a negotiated selection process and had a record of service to indigenous peoples within civil society.

Formation of the Consultative Body to the Commission

The negative experience with the first Commission had prompted a search for ways of overseeing NCIP performance. One possible way this could be done was by activating the Consultative Body as mandated by the IPRA, which the first Commission did not establish.

There were many problems in relation to this. One was that only the Commission could convene the Consultative Body, and it could do so (or not) as it saw fit. It could not therefore have significant overseeing functions. Another was that both the IPRA and IRR were very vague in describing the specifics for selecting the members of the Consultative Body. The IRR merely stipulated that the Consultative Body would be composed of 35 members, 5 from each ethnographic region, and that gender and sectoral representation had to be ensured. The lack of more specific directives was something that the OPAIPA working group on the Consultative Body tackled.

Apart from the dynamics mentioned earlier, the working group had to deal with the complicated issue of representation. Again, indigenous peoples and indigenous rights advocates were brought face-to-face with the realization that no hard data on Philippine indigenous peoples existed. For one, the population count was based on projections of estimates. For another, there had been no conclusive work on the total number of indigenous groups in the country, including the thorny matter of how to distinguish between groups, sub-groups and communities. What then could be the bases of representation?

Consultations with indigenous peoples' organisations on the initial outputs of the different OPAIPA workshops were held in each ethnographic region during mid-2001. In the course of undertaking these, a process for the selection of the Consultative Body gradually

evolved. Indigenous peoples' organisations were unanimous in declaring that ethnographic regional consultative bodies should be convened. It was also generally agreed that these ethnographic regional consultative bodies would exist independently of the National Consultative Body; i.e., they could convene even without the bidding of the NCIP. Each ethnographic region would determine the manner by which the members of its consultative body would be selected, many of them opting for representation of major groups at the provincial level first. Then each ethnographic regional consultative body would be responsible for determining how to select the five representatives of each ethnographic region to the Consultative Body at the national level. Some recommendations for selection that emerged related to the need or issue to consult about, rotation or election.

The round of consultations ended with a preliminary listing of members of each ethnographic regional consultation. The list again revealed the problems of determining representation: lack of mechanisms for small groups to be included, town-based politicised leaders versus community-based traditional leaders, multiple representation by major groups at the expense of other groups, gender and sector based representation viewed as arbitrary given traditional male-dominated leadership, etc. And there was the added problem of who would finance these ethnographic regional formations, as they were not within the IPRA and IRR, and therefore could not be allocated a regular budget.

As all these had the status of recommendations, by the end of OPAIPA's days, it was left to the new Commission to carry on the work regarding formation of the Consultative Body. To date, however, there has been no movement on this matter. The new Commission declared that its more pressing concerns lay with the finalization of policies on the awarding of recognition to ancestral domains and lands and of Certificates of Free, Prior and Informed Consent, as well as the reorganization of the NCIP.

A crucial factor to keep in mind is that the National Anti-poverty Commission (NAPC) has a council for each of the 14 basic sectors, each with its own consultative council, and that the indigenous peoples are one of these sectors. From the very start of the Arroyo administration, the approach of the NAPC was to synchronize and coordinate NAPC and NCIP thrusts as much as possible. Allegedly, one of the urgent calls of the NAPC Indigenous Peoples Sectoral Council is for the NCIP to immediately convene the Consultative Body.

247

Review and revision of the procedures to obtain land titles

A concrete expression of the upholding of indigenous peoples' rights is respect for indigenous peoples' self-determination through recognition of their ancestral domains and lands and by ensuring that projects that affect their communities are there with their free, prior and informed consent. Such recognition is thus among the very important provisions of the IPRA, through the NCIP's processing of Certificates of Ancestral Domain Title (CADT), Certificates of Ancestral Land Title (CALT) and Certificates of Free, Prior and Informed Consent (CFPIC). But the first Commission failed miserably in this regard. It granted over 300 CALTs and an undetermined number of CFPICs, many of them under spurious conditions. And while the former Commissioners had approved nine CADTs on the eve of their departure, the actual granting was not pushed through, such that not one single ancestral domain received a title during their time in office. An OPAIPA working group was formed to review and propose a set of procedures for the granting of these certificates, to be presented to the incoming NCIP commissioners as recommendations. In June 2001, during the opening of the Philippine Congress and the President's State of the Nation Address (SONA), President Arroyo committed the government to releasing 100 CADTs to the indigenous peoples within a year.

As the SONA commitment to indigenous peoples desperately tries to race against time, the 100 CADTs seem an impossible dream. Lacking technical know-how, much less funding, the NCIP had, by April 2002 still not issued a single CADT. Aware of these difficulties, the SONA commitment was downscaled in a recent cabinet meeting to 100,000 hectares.

Reorganization of the NCIP

One of the major burdens of the new Commission is that it inherited an NCIP bureaucratic structure, well-known for its entrenched ineptness and corruption. To address this situation, the Commissioners have to deal with so many issues, among them their own inexperience in coping with government bureaucracy, civil service requirements that confine indigenous leaders with no formal schooling to janitorial positions, a Congress that has still not passed the NCIP budget such that there is money for employees' salaries but none for program implementation, regional politicians who play a heavy hand in filling up appointed positions, reconciling the IPRA-defined ethnographic

regions with the geo-political regional structure within which the Philippine government functions, and many more. Now that the new Commission has issued the policies for CADTs/CALTs and CFPICs, it has said that its next priority is NCIP reorganization. An Administrative Order of President Arroyo will provide additional support and will serve as the legal basis for the NCIP restructuring.

Diverging views and approaches

This article is not meant to convey the impression that the indigenous peoples of the Philippines and their supporters all stand behind the IPRA and are jointly struggling for its full implementation. There is a broad range of responses to the IPRA, ranging from those who believe that it sells out indigenous convictions regarding self-determination and the recognition of ancestral domain and land rights, and who therefore do not want to have anything to do with it, to those who see its many shortcomings but are willing to take this opening to further indigenous peoples' rights within the mainstream, and those who like the law and contend that what is merely lacking is its proper implementation.

Then there are the opposing forces, such as mining, logging or agribusiness companies as well as political interests that would love to see the IPRA disappear so that they can continue their exploitation of indigenous peoples' ancestral domains. They would like nothing more than to see the new NCIP fail so that the abrogation of the IPRA can be justified.

In the words of a former key person within the OPAIPA, never before had the indigenous peoples of the Philippines such an array of opportunities within the government: a Supreme Court that has already twice defeated the constitutional challenge to the IPRA; a President who has spelt out specific targets for the upliftment of the indigenous peoples and is willing to allocate a budget for this; and a Commission most of whose members are from the ranks of those recognised to have worked within civil society for indigenous peoples' rights. Whether or not President Arroyo is doing this out of political expediency or because of a genuine commitment to indigenous peoples' self-determination is beside the point if one is to read the situation as presenting indigenous peoples with more choices and opportunities within the mainstream. Within the common vision of indigenous peoples' self-determination, all these conditions shape their hopes and frustrations. At this point in time, the NCIP is being closely watched by all forces. It is a critical factor in determining whether or not hope once again becomes cemented into frustration.

249

The ongoing crisis: militarization and development aggression

In the meantime, while all this planning and preparation was ongoing, the indigenous peoples had no respite from development aggression and other forms of oppression. Deaths and massacres were perpetrated on indigenous communities in Bukidnon, Zamboanga and Agusan province on Mindanao. There is growing concern at the number of human rights violations against the indigenous peoples, which alarmed even the UN Commission on Human Rights.

In September 2001, President Macapagal Arroyo issued Executive Order No. 18 on the integration of the Cordillera Peoples' Liberation Army (CPLA) into the Armed Forces of the Philippines (AFP). Around 264 CPLA regulars have since become part of the AFP, while 528 others have joined the Civilian Armed Forces Geographical Unit (CAFGU). According to the government, this order is meant to build peace in the Cordillera. It has allocated 60 million pesos to the integration process.

Cause-oriented groups and human rights advocates denounced this measure as an act of grave injustice to the people of the *Cordillera*. CPLA elements have been responsible for the political killings of several leaders and members of the Cordillera Peoples' Alliance (CPA) and staff of development NGOs between 1987 and 1992. Several leaders and members of the CPLA have also been identified in criminal activities such as robbery and extortion. The families of the victims of CPLA atrocities feel that the new government, instead of providing justice, has now coddled this vigilante group, adding more bad eggs to the military establishment. Many fear that this will lead to more instability than peace in the region.

Military operations in the Cordillera hinterlands led to the brutal execution of Mr. Johnny Camareg, a 55-year-old farmer of Betwagan, Sadanga, Mountain Province on August 9, 2001. Three children of Tocucan, Bontoc were also the victims of indiscriminate firing when they were mistaken for rebel forces while they were gathering firewood in the forest. In addition, a 17-year-old student was raped by a certain Sgt. Joel Torallo, based in Besao, Mountain Province. The military unit involved in all these atrocities is the 22nd Special Force of the Armed Forces of the Philippines.

An alarming increase in tribal conflict in Kalinga and Mountain Province has been recorded since the year 2001 to the present. In particular, the longstanding boundary dispute between the people of Betwagan and Bugnay led to the onset of full-scale tribal war on December 2001. This escalation to tribal war was partly instigated by

250

elements of the CPLA based in Bugnay. Five individuals have already been killed and three wounded as a result of this conflict. Other conflicts are related to boundary delineation, resource-use competition over forests and water sources and criminal incidents. The Bodong Pongors Organization (BPO) of tribal elders and the Cordillera Peoples Alliance have been holding series of workshops with elders for the peaceful settlements of tribal conflicts and calling for a stop to tribal wars.

The indigenous peoples of Itogon, especially the Ibaloy of Dalupirip, remain very anxious as construction of the San Roque Dam is due to be completed by mid-2002. In June 2001, an independent evaluation of the NCIP on the dam construction confirmed that there was no Free, Prior and Informed Consent (FPIC) given by the indigenous peoples affected by the dam project. The FPIC is a legal requirement under the Indigenous Peoples Rights Act (IPRA). On March 15, 2002, the Itogon Inter-Baranggay Alliance (IIB-A) submitted a petition to the NCIP to issue a cease and desist order on the ongoing construction of the San Roque Dam. The affected communities have been lobbying the Japan Bank for International Cooperation, the funder of the dam project, to withdraw its financial support from the project.

Lepanto Consolidated Mining Company is set to expand its mining operations within Mankayan towards Bakuna and Buguias in Benguet, and Tadian, Bauko and Bontoc in the Mountain Province. Residents of Colalo, Mankayan are protesting at the expansion of the Lepanto tailings dam complex because it will cover their farms and residential lots. Meanwhile, farmers living below the tailings dam complex believe that the massive silting of the Abra river, and the periodic flooding along its banks, are due to the build-up of Lepanto tailings in the river. There is now growing opposition to the Lepanto's operation from farmers along the Abra River, and those in the expansion area of Lepanto's operation.

The situation in Palawan

The biggest challenge faced by indigenous organizations and NGOs in Palawan at present is the establishment of a nickel refinery by Rio Tuba Nickel Mining Corp. (RTNMC). Mining activities by RTNMC are presently located in the municipality of Bataraza. The proponent, RTNMC, intends to maximise its operations by utilising the existing low-grade nickel ores currently stored in open dumpsites within its concession. This would justify the establishment of a nickel refinery

251

plant, of a support hydrogen sulphide production plant and limestone quarrying operations, with disastrous consequences for the livelihoods of several Pälawan indigenous communities. Some of the areas under serious threat include: Sitio Gutok, Sarung and Kulantuöd, Barangay Iwahig and Rio Tuba proper.

Between 2001/2002, non-government organizations in Palawan, headed by the PNNI (the Palawan NGOs Network, Inc.), launched a major fight against RTNMC. Photographic evidence of RTNMC's environmentally destructive practices, and field information have been acquired by both BPP (Bangsa Palawan, Philippines, Inc.) and ELAC (Environmental Legal Assistance Center). From January 9 to 15 2001, various consultations took place between the indigenous communities affected and the local NGOs. As a result, a petition against RTNMC was jointly signed by indigenous representatives, and has been submitted by PNNI to the Department of Environment and Natural Resources (DENR). It would appear that the hydrothermal metallurgical processing plant application was favorably endorsed by the Palawan Council for Sustainable Development (PCSD) in December 2001, and now awaits final approval from DENR.

References and sources

HAPIT- Official Publication of CPA.

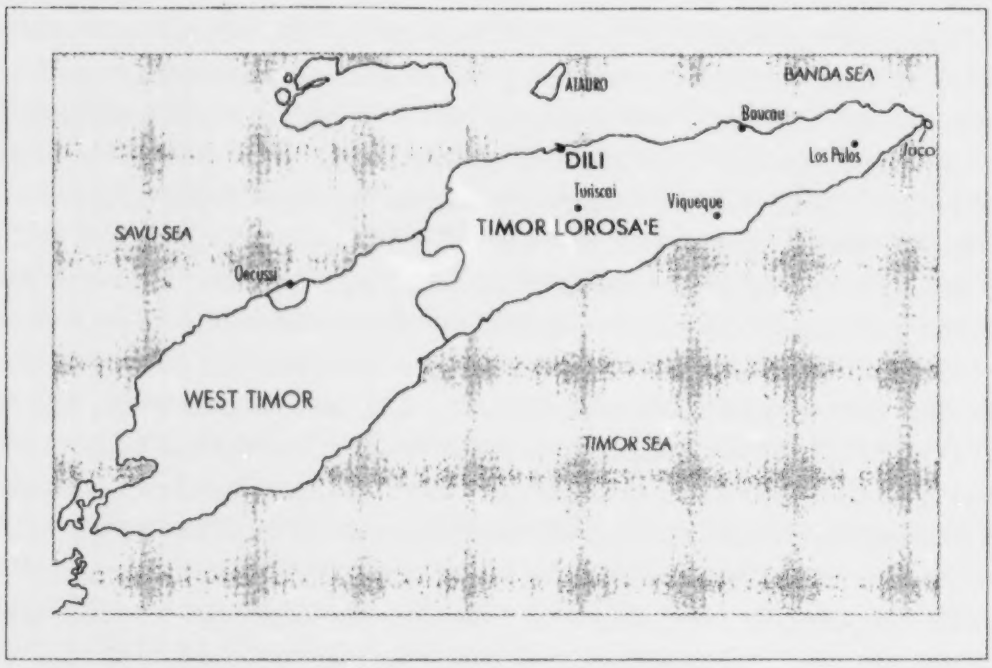
Novellino, Dario. 2000[a]. "Forest Conservation in Palawan" in *Philippine Studies* 48: 347-72.

Novellino, Dario. 2000[b]. "Recognition of Ancestral Domain Claims on Palawan island, the Philippines: Is there a Future?" in *Land Reform: Land Settlement and Cooperatives* 2000/1, Food and Agriculture Organization (FAO) of the United Nations.

TIMOR LOROSA'E (EAST TIMOR)

On May 20 2002, East Timor will finally become Timor Lorosa'e - the Land of the Rising Sun - a fully independent nation, and a full member of the UN.

252



The territory of Timor Lorosa'e is made up of four parts: the mainland, i.e. the eastern half of the island of Timor, 16,384 sq.kms; the Oecusse enclave, which lies on the northern coast of West Timor (Indonesia) 2,461 sq.kms; the island of Atauro, 23 kilometres off the northern coast of East Timor and its capital Dili; and the tiny island of Jaco, 8 sq.kms east of the eastern tip of the mainland. The total population is estimated at around 800,000.

After almost 24 years of Indonesian occupation, and deeply marked materially and spiritually by the outbreak of violence following the UN-organised referendum in August 1999 (see *The Indigenous World 2000-2001*), East Timor has, since October 1999, been administrated by the United Nations Transitional Administration in East Timor (UNTAET) in preparation for independence.

Successful elections

The first step was the elections for the Constituent Assembly, which took place on 30 August 2001 as the country's first elections since the end of Indonesian rule.

Fretilin, the Timorese Front for National Liberation, the party that declared East Timor independent in 1975 and the largest single force in the long fight against occupation, won 57 per cent of the votes,

BEST COPY AVAILABLE

gaining 12 of the 13 district seats and 43 of the 75 national seats. And yet the results still fell short of the 85-90 per cent the party had been predicting.

Twelve parties are now represented in the 88-seat Constituent Assembly. This reflects considerable public openness and interest in the newer parties. The Democratic Party (PD) and the Social Democratic Party received strong votes in many districts, and they now have the second largest block of seats after Fretilin, with 7 and 6 seats respectively. The Social Democratic Association of Timor (ASDT) will also hold six seats.

Fretilin had hoped that it would win a large enough majority to be able to draft the constitution in the assembly. Given the considerable non-Fretilin vote, such a strategy is now not so easy. At least 60 of the 88 members of the Assembly must approve the constitution for it to be adopted.

Legacies of the past and challenges of the future

For 24 years, the East Timorese had one overriding problem: how to get rid of the Indonesians. Now this problem is gone but since the establishment of the Second Transitional Administration on September 2001, the new nation now faces both the legacies of the past and the challenges of the future.

Relations with Indonesia

Relations with Indonesia are marked by the continuing refugee crisis: approximately one-tenth of East Timor's population – or about 80,000 refugees - continues to be held in Indonesian military and militia-controlled refugee camps, mostly in Indonesian West Timor.

Border security is another issue. Indonesian military-backed militias continue to destabilize East Timor by launching cross-border raids from their bases in the West Timor refugee camps. Many militia leaders say they plan to increase hostilities when the UN reduces its peacekeeping presence in East Timor during 2002-2003.

Citing ongoing human rights abuses and lack of accountability for violations, the East Timor Action Network (ETAN) and the Indonesia Human Rights Network (IHRN) have also urged the Bush administration not to strengthen ties with the Indonesian military in reaction to the September 11 attack on the US. Renewing military relations with Indonesia would set back reform efforts and democracy in Indonesia

while undermining East Timor's security, the groups said. The US has withheld most military assistance from Indonesia since the Indonesian military and militia razed East Timor in September 1999 after it voted overwhelmingly for independence.

Reconstruction and development

The country faces a huge reconstruction task. The Indonesian reprisal in 1999 left the infrastructure (roads, health clinics, hospitals, schools, etc.) in a very poor condition and many houses are in ruins. People lost their livelihoods. Fields and crops were burnt, livestock killed, tools stolen, equipment smashed. Nearly everyone must find the capital, equipment and stock needed to start again.

There is widespread poverty, and poor health services, especially in the rural areas where the majority of the population lives. Maternal and infant mortality rates are high. New figures produced by the World Health Organisation (WHO) in early 2002 show that twice as many women die in childbirth in East Timor than anywhere else in East Asia or the Western Pacific. According to the health organisation, there are only 196 midwives available for a population of 800,000.

Illiteracy rates - particularly among women – are very high. Over 147,000 children are currently attending primary schools in the country's 13 districts. Yet the absence of a standard syllabus, the shortage of trained schoolteachers and school facilities are major problems facing primary education. A new educational system and new school books are also needed since education, until 1998, was based on Indonesian material.

The language issue

One of the greatest challenges lies in the choice of language for East Timor: at least four languages are used and/or preferred, and more than thirty dialects are spoken. While Portuguese has been chosen as the country-to-be's official language, to be used in all official business, the vast majority of the population is not fluent in Portuguese, and Tetun (an Indo-European idiom similar to Malay but with strong Portuguese and other influences) remains the national lingua franca, spoken by most East Timorese at home alongside their provincial dialects. While this may not be a huge problem , a greater difficulty is posed by the fact that, as all official business as well as education has been conducted in Malay (the so-called Bahasa Indonesia) for the last 26 years, this remains the language to which most civil servants are accustomed, including of course teachers - and their textbooks.

Replacing it with Portuguese in the short term would be impossible, while replacing it with Tetun would be impracticable, since Tetun has not been fully developed as a language.

Many East Timorese still doubt the effectiveness of Portuguese as an official language. While most leaders - especially former exiles - would not dream of any alternative, many of their less educated compatriots may still favour the practical use of Indonesia's language instead. A few would like to see Tetun become a written language to replace either. To complicate things further, English has become the trendy language of the youth, after almost three years of massive UN personnel presence (9,000 in the Peacekeeping forces; 2,000 in the civil administration) and of international non-governmental organizations. English is the working language of UNTAET.

Women make their mark

The elections to the Constituent Assembly marked the entry of women into East Timorese politics. Overall, women won 24 seats in the assembly but only 23 of them actually took their places. Women's rights groups in East Timor hailed the development and said the incorporation of a women's rights charter into the constitution would be their next goal.

For many years, the women of East Timor were not allowed to speak out, not allowed to organise themselves. A brutal and foreign dictatorship ruled their lives. Now they may speak out, now they may organise themselves, and now they will participate in the shaping of their country's future constitution. But their problems are far from over.

Many are deeply traumatised by the sexual abuse and degrading treatment they suffered during the Indonesian military occupation from 1975 to 1999. Many were furthermore socially stigmatised and, if the relationship had produced a child, the child would also be stigmatised - as well as fatherless.

As a result of the Indonesian special family planning policy - the KB program (*Program Keluarga Berencana*) - many Timorese women were sterilised when they came to state-run health clinics, often without their knowledge and consent. The purpose of this policy was to change the demographic composition of the population, keeping the number of East Timorese low while more Indonesians from Indonesia were brought to East Timor as "trans-migrants".

Another problem faced by East Timorese women is the unequal gender relationship. In East Timorese society, tradition and customary law favours men over women. Among the practices that East

Timorese women's rights activists want scrapped is the traditional dowry system, which they say reinforces a patriarchal society system.

According to Manuela Leong Pereira, the director of Fokupers, the East Timorese Women's Communication Forum, an independent NGO, domestic violence has existed in East Timor for a long time, though largely hidden from public view or discussion. She states:

> *We rarely read about non-public violence, such as that which takes place inside the home and which is actually more pervasive. This silence is extremely dangerous. East Timor has inherited Indonesia's legal code in which there is no specific reference to domestic violence. The law must also give protection to women facing violence.*

Preparing the future

As one of its first actions, the Second Transitional Administration has put a Commission on Planning in place to steer the preparation of the National Development Plan so that it is ready before Independence Day, 20 May 2002. One of its components is the Consultative Commission of Civil Society on Development (CCCSD).

The process for the preparation of a National Development Plan has two core objectives: (1) to fully reflect the needs and aspirations of the Timorese people; and (2) to focus on an action plan for reducing poverty.

The CCCSD is responsible for advising on how institutional elements of civil society, both traditional and modern, can use their networks to maximise the participation of the East Timorese people in the consultation process.

The consultation's major output will be the compilation of the people's vision for East Timor for the medium (2002-2005) to long term (2020), which, in turn, is expected to be incorporated into the final plan for the development of the nation for the next two decades.

References and sources

Retbøll, Torben. 2001. Report from Networking Trip. IWGIA.

Retbøll, Torben. 2002. *"The Women of East Timor"*. Paper prepared for the East Timor Conference, Stockholm, Sweden, 21 May 2002.

Pacific News Bulletin. Vol.16,9 (September 2001), Vol.17,1 (January 2002).

Maurizio Giuliani. Personal communication. 2002.

Timor Aid: www.timoraid.org

257

East Timor Action Network (ETAN): www.etan.org
UN Transitional Administration in East Timor (UNTAET): www.un.org/peace/etimor/etimor

INDONESIA

The high hopes for fundamental reforms after the fall of Soeharto's New Order regime did not generally materialize, as entrenched interests within the bureaucracy and the political system proved capable of protecting themselves. Nevertheless, the end of the New Order and the repression that was its hallmark led to unprecedented freedoms in key areas such as the press and political organization. This also provided a new opportunity for indigenous peoples in all parts of Indonesia to begin to reclaim their rights. A watershed event in this regard was the meeting in March 1999 in Jakarta of representatives from all over the country. The major result of this meeting was the formation of a national umbrella organization called AMAN, *Aliansi Masyarakat Adat Nusantara* or the Alliance of Indigenous Peoples of the Archipelago.

Empowering the regions – empowering indigenous peoples?

One very significant reform, which was carried through energetically, was decentralization. Passed under President Habibie, Law No. 22 of 1999 on Regional Government replaced the two New Order laws on regional and village government from 1974 and 1979.[1] It was something of a panic measure at a time of rising pressure from the regions not just for autonomy but an even looser federal state or, in some cases, outright secession. These pressures were a reaction to decades of repression and abuse by the centralised and authoritarian state led by Soeharto, yet the major forces behind the call for radical decentralization were not based in civil society (which had had to suffer most from the politics of repression) but rather in the local elites, many of them deeply entrenched in the old power structures of the Soeharto regime. While the discourse of the "blue collar" movements for regional au-

258

tonomy led by these circles demanded the claiming of "traditional rights", the ethnic groups whom they wanted to enfranchise were mainly the locally-dominant ones, not the often politically and socially marginal indigenous communities. Any discussion of the merits and shortcomings of "regional autonomy" in Indonesia, therefore, must take note that the official (and, indeed, also the NGO movement's) category of *adat*-based (traditional) rights is much broader than the standard notion of *indigenous* rights in international legal discourse.

The new law went quite far in devolving power to the districts (*kabupaten*), while the powers granted to the provinces themselves were narrowly circumscribed, concerned only with managing matters not assigned to the districts, or involving cross-boundary affairs. As the main beneficiary of decentralization, the district became a fully self-governing entity (unlike before, when it was also an administrative unit under the province and the state) with potentially extensive powers to manage its lands and natural resources as well as to raise revenues (provided for under a separate law). Reflecting the considerable demographic and economic growth of the preceding decades, and harking back to pre-existing autonomous polities from the colonial and pre-colonial period, many New Order districts were divided up into smaller entities, bringing autonomous government significantly closer to local communities.

Those local communities, i.e. villages, were themselves also to a significant extent reorganized under the new law. In a tone very different from the village law of 1979, the new law declares that the village has "authority to regulate and manage the interests of the local community based on its origins and local customs and traditions that are recognized within the system of national government"

BEST COPY AVAILABLE

259

(Article 1).[2] While the authority of the village is limited only to those functions that have not yet been accorded to district or provincial governments, at least the new law makes an explicit reference to indigenous cultural and political traditions. In addition to a directly-elected village head (Article 95), the law also provides for the formation of a Village Representative Council (*Badan Perwakilan Desa)* whose members must be chosen by and from among the villagers themselves. The duties of the representatives are to protect customs and traditions (*adat istiadat*), make village regulations, to be a conduit for the aspirations of the community, and to oversee the running of village affairs (Article 104).

It is, furthermore, specified that district government and / or third parties that are planning developments in the territory of a village have a duty to involve the village government and representative body in planning, implementation and monitoring (Article 110). It is also stated that district bylaws must recognize and honour the rights, origins, as well as customs and traditions of the village (Article 111).

It is noteworthy that in amendments to the Constitution, which were passed in the year 2000, the chapter on Regional Government was greatly expanded and clarified. In the present context, the last clause is especially interesting:

> *The state recognizes and honours the* adat *law communities as well as their traditional rights as far as these remain a living reality and are in line with the development of society as well as the principles of the Republic of Indonesia as a unitary state, as they are regulated by laws.*[3]

While traditional rights are thus subject to certain qualifications that may have the potential to nullify them, the novel and explicit recognition of such rights in the Constitution provides an important basis for arguing their continuing relevance in given situations.

Another extensive addendum to the Constitution of great significance to indigenous peoples is a new chapter on Human Rights. Particularly relevant sections are Article 28I (2): "Everyone is entitled to be free from discriminating treatment on whatever grounds and entitled to protection against such discriminating treatment", and (3) "Cultural identity and the rights of traditional communities are to be honoured in accordance with evolving epochs and civilization."[4]

While the new legislation on regional and local autonomy has been criticized for its ambiguities and the poor quality of its drafting and, of course, for going too far in dismantling centralized state power

in the view of some, it has clearly altered the context of maintaining local or traditional rights very substantially. This is especially so for the large ethnic groups that constitute majorities in their areas and whose members control legislatures and administrations at the district level. To take one example, the Malays in Jambi or Riau province, whether they are considered as tradition-bound or not, are not only fully in control of the governing institutions in the villages where they reside but also at the levels of the district and the province, where officials up to and including the Governor are now of preference recruited on the basis of their ethnic and local affiliation. Compare this to a situation just four years ago, when all these institutions were subverted by the central government for the purpose of gaining access to and exploiting lands and resources. The question, of course, is to what degree the windfall of these momentous changes also benefits those ethnic groups whose political bargaining position has traditionally been and continues to be weakest – the indigenous peoples, and among them in particular those that never produced any kind of educated middle-class who could articulate their demands.

Minorities among minorities: the special problem of marginal indigenous communities

The paradigmatic shift from unitary nation-state to regional autonomy has not so far addressed the special problem of protecting indigenous peoples, especially the very small ones, from cultural extinction and social and economic disintegration. Under the New Order, some of these were targeted for government assistance, provided under the Social Affairs Ministry program for isolated tribes. In practice, what it amounted to was resettlement which, rather than solving basic problems, especially as seen by the groups themselves, caused disruptions and exposed the groups concerned to increased risks of marginalization by uprooting them from their lands and denying them access to their livelihood bases.

With decentralization, the role of the Social Affairs Ministry has been greatly diminished; under President Abdurrahman Wahid it was even temporarily abolished. Its role with respect to traditional communities is reduced to developing general guidelines for districts, which now have authority over both policy, allocation of funds and extending assistance to "isolated *adat* communities" (*masyarakat adat terpencil*), as the target groups are now called. The newly-renamed Directorate for Isolated *Adat* Communities has adopted progressive

261

terminology in its general guidelines, "empowerment" being a key catchword.[5] But the technical guidelines that are distributed to regional authorities differ little in substance from the earlier approach, with resettlement still being pivotal in introducing change.[6] It now remains to be seen what the districts will do with their indigenous minorities.

Small indigenous minorities are faced with a particular problem in being surrounded by ethnic majorities who, too, may claim traditional status and the special rights thereby entailed, and who have now been put in control of overall resource management at the district level through their control of *kabupaten* government. It should be borne in mind that traditional inter-ethnic relations have often been marked by exploitation and discrimination on the part of regionally dominant groups. Examples are forest-dwelling shifting cultivators or hunter-gatherers like the Kubu or Orang Rimba, the Talang Mamak, the Sakai, the Punan, and so forth. It seems, therefore, that the traditionally marginal indigenous communities, especially those who have poor access even to village-level political institutions or who are outside these altogether, such as the Orang Rimba, are in particular need of attention and advocacy support. Those who wish to support the rights of indigenous peoples would thus be well-advised to clarify both priorities and strategies so as to make an impact where it is most truly needed or, at the very least, in order to avoid inadvertently contributing to the marginality of the smaller groups.[7]

Local government and indigenous aspirations

As the ongoing devolution of power from national to district and – to a lesser degree – provincial levels of government has been slow to make an impact on villagers' lives, many peasant and indigenous communities have started to question the relevance of the state in general in their lives. Indigenous peoples, who were among those groups that suffered the most from decades of bad governance, have started to respond critically to the policy of Local Autonomy. Today, the policy is increasingly often seen as a new venue for the state to expand its control over the people, rather than as an alternative to the previous centralised government and the subversion of traditional institutions at the village level that went with it. Those indigenous communities allied under AMAN have been trying to push local governments to consider crucial aspects of indigenous governance and social systems in an effort to make village government more responsive to local needs. They demand that local-level legislation

262

should acknowledge the right of local people to be governed by traditional *adat* institutions.

Drafts of Local Regulations reflecting this demand have been produced in some regions, such as in West Kalimantan and Bali without, however, having yet been brought into force. In West Lampung, however, 13 Local Regulations are now in force, establishing local government units and governance practice in accordance with traditional indigenous institutions and practices, and redrawing administrative boundaries along the lines of traditional communal territories. For example, West Lampung's Local Regulation No. 02/2000 replaces the New Order entities *desa* and *kelurahan* with their traditional equivalents, *pekon* and *pertain*. Similarly, Local Regulations in Toraja, South Sulawesi, established the traditional local political unit, *lembang*, as the basis of local government, while Bali introduced the *desa pekraman* for the same function.

The fact that, gradually, cultural diversity is reasserting itself in the shape of resurgent local governance institutions testifies to growing pressure – both from the grassroots and the public – for the recognition of indigenous social systems and ways of life. In this regard, however, it is important that the indigenous movement keep things in perspective and realize that states everywhere in the world have periodically tried to gain credence and loyalty by adopting local terminology, and that the risk of the state trying to manipulate indigenous governance and customary law systems is very real. Even with decentralization as the new buzzword, the chance that the state starts to resemble local society is much less likely than the opposite – that local society continues to be refurbished in the image of the state.

Clearly, the re-introduction of indigenous governance systems as a way of rolling back the impact of state-imposed homogenization, which has destroyed many autochthonous social systems in Indonesia, is an effort that deserves indigenous Indonesians' support. All the while, however, indigenous organizations should be wary of attempts by the state to infiltrate indigenous governance systems with its organs, thus diluting and, finally, subverting them. Thus, in some provincial districts, the *bupati* (District Head) has been promoted to a position of special authority in indigenous governance systems. Such developments have the potential to destroy the realization of the goal of autonomy for indigenous communities. A look at local governments' record on natural resource management is instructive in that respect. Extractive industries that exploit forest resources have not been reined in by the new local power-wielders. On the contrary, forests are seen by most local governments as a prime source of revenue, so that the

263

private and semi-companies preying on forest resources have remained the same but the revenues generated by taxing them are now making local instead of formerly national elites rich.

Local indigenous communities have traditionally been, and in many cases still are, autonomous social, political and legal entities. Just like the state and the units it invests with administrative functions, the community has a territory, people and the governance system needed to maintain peaceful relations among its members. AMAN, the national federation of Indonesian indigenous peoples, has always made it clear that local autonomy can mean no less than autonomy on a community – as opposed to e.g. district or province – basis. This understanding was formulated in AMAN's Workshop and Seminar in Liwa, West Lampung, from January 10 to 12, 2002, before the Third Meeting of AMAN's National Council. Indigenous autonomy in AMAN's understanding is a bundle of rights the single components of which cannot be separated from each other. The rights entail the right to define the relevant territorial units used in administering the local population, the right to control the management of the natural resources therein, and the right to apply customary law to a wide range of legal issues. Such autonomy is ultimately rooted in and legitimized by locally specific historical experiences and parochial cultural values, which tend to differ from one community to another. This is why we now see the re-emergence of different local political systems, like the *binua/banua* in Kalimantan, the *huta* of Tapanuli, *gampong* and *mukim* in Aceh, *nagari* in West Sumatra (Minangkabau), *marga* in South Sumatra, *pekon* in Lampung, *negeri* in Minahasa, *kampung/ngata/boya* among the Kaili in Central Sulawesi, *lembang* in Toraja, *pamusungan* in West Lombok, *boa/adak* in Manggarai (Flores), *yo* in Papua (Sentani), etc.

Legislative change in the field of natural resource management policies

Another important political event was the passing of Decree No IX/MPR/2001 by the People's Consultative Assembly (the upper house in the Indonesian "parliamentary" system), which was passed on November 9, 2001. It was the first time the state had passed an umbrella regulation offering a space for agrarian reform and equitable, people-oriented natural resource management. The significance of the Decree is derived from the fact that agrarian reform and natural resource management are now once and for all placed firmly in the

264

political sphere and no longer seen only as economic bones of contention in the public sphere. Significantly, too, the decree was passed explicitly as a contribution to democratization, the rule of law and poverty reduction. The Decree also relativized the principle of the state exerting control over "...land, water, and its content of natural resources" by specifying that such state control must be "...dedicated to the prosperity of the people", as stated in the Constitution of the Indonesian Republic.

In addition, the Decree is important for enumerating the principles that are supposed to govern the state's revised forestry, mining and agribusiness policies, as well as the implementation of agrarian reform. The twelve principles address human rights, cultural diversity, democracy and broad-based popular participation in political processes, gender equality, sustainability of natural resource and agrarian resource use, social and ecological functions of natural resource management and protection for indigenous peoples and their cultures.

However, it is at least doubtful that the current political dispensation will muster the political will to substantiate the decree by developing well thought-out legislative instruments to translate a mere declaration of intent into political practice. Item j, Article 4 of the Decree, insists that future policies on natural resource management and agrarian reform have to "recognize, respect, and protect indigenous rights and cultural diversity" but so far there has been no sign that this or other well-sounding pronouncements will ever be transformed into laws that bite. This is doubly annoying because Article 6 and 7 of the Decree themselves emphasize the importance of follow-up legislation in the form of organic regulations deriving from it. Articles 6 and 7 entrust both the President and the House of Representatives with developing legislative initiatives with regard to agrarian reform and natural resource policies in the "public domain" (under which category indigenous territories and the forests within them still fall, according to official parlance).

Decree No IX/MPR/2001 would not be the first major Act, Decree or Law to die a slow death because of the government stalling the passing of laws operationalizing implementation. Parliament and the bureaucracy delayed the formulation of the first major organic regulation implementing Act No. 5/1974 (or UU No. 5/1974) for no less than 18 years (Government Regulation No. 45/1992 on the Implementation of Local Autonomy), while Government Regulation No. 8/1995 on the Partial Transfer of Governmental Authority from the central government to 26 pilot *Kabupaten* or districts took 21 years to be issued.

265

One of the major strengths of Decree No IX/MPR/2001 is that it unifies and streamlines a body of scattered pieces of legislation and constitutional provisions relating to natural resource management on indigenous territories that were often contradictory, with the result that the extractive industry and different branches of the bureaucracy could choose which sectoral law they wanted to apply to their case. Forest concession holders (HPH), for instance, usually upheld the Basic Forestry Act, which would only recognize state forest and not acknowledge native title to forests and land. Mining investors, for their part, were able to point to Article 33 of the Constitution that vested ownership of – and therefore the right to offer mining concessions over – subsoil resources in the state. Unlike with the new law, no principle on social and environmental compatibility restricted logging and mining ventures under the sectoral laws that Soeharto had promulgated.

Communal conflict and peace building

For the first four years after Soeharto's abdication, reporting on developments in Indonesia was a task overshadowed by a series of bloody communal conflicts that either directly involved indigenous communities or then destabilized the areas inhabited by them. The protracted ethno-religious conflicts in Poso and Ambon still linger five years after Soeharto, while in other places, many new conflicts have emerged between indigenous peoples on one side and companies, local government, migrants, or even fellow indigenous groups on the other. The list of conflicts involving or affecting indigenous peoples is long: the one between the BPRPI (an organisation of mainly Melayu indigenous peoples) and PTP (State Sugarcane Plantation) and KIM (Kawasan Industri Medan) in North Sumatra, the cases involving the Meratus and Ketungau Dayak in Kalimantan, the hotspots of Jambi and Bengkulu in Sumatra, Dongi-Dongi in Sulawesi, etc.

In the case of the conflicts in Poso (Sulawesi Island) and Ambon (Maluku), the government has initiated and facilitated a reconciliation process. The Malino Agreement (named after a town on Sulawesi) between the government and conflicting parties in Poso and Ambon is one of the results of the effort. However, whereas the government claims to have successfully brought the warring sides to the negotiating table and made them talk peace at Malino, some local NGOs argue that nothing has been achieved yet as the local people on both sides question the legitimacy of those that claimed to represent them in the peace negotiations. Overall, the government – national as well as local – clearly lacks

269

the imagination to try out new ways of building peace in these deeply divided local societies. A promising alternative channel for successful conflict transformation would be to revitalize traditional *adat* procedures through which the conflicting parties could meet, instead of falling back on the worn-out mechanism of performing rituals of submission attended always by the same "representatives" of the religious groups involved, and of whatever "ethnic" associations and youth and professional organizations offer themselves for these state rituals. Clearly, there is more to these conflicts than the black-and-white of "Muslim" versus "Christian", or "indigenous" versus "migrant".

The failure of such categories can be seen in the East Kalimantan district of Paser. There, the proposal to divide Paser into two districts has created substantial tension between the indigenous Dayak Paser and migrants of various backgrounds. It was announced that the northern part of the District of Paser, rich in mineral ore and a magnet for non-Dayak in-migration, would be made into a new, separate district. The Dayak were infuriated by this proposal, decrying it as amounting to segregating the resource-rich areas of the district from the agricultural backwaters and giving the former to non-Dayak latecomers to the district. The conflict in Paser shows a pattern that is also becoming apparent elsewhere in the archipelago, in which decentralization becomes a pretext for expropriating indigenous domains, handing them over to local elites and outside investors.

Indigenous communities who went through protracted conflicts with other parties have accorded the strengthening of indigenous organizations and the revitalization of indigenous institutions the highest priority in their work programs. This new approach is based on the premise that "genuine" reconciliation can only be initiated by "genuine" representatives of warring communities, just as "genuine" claims to ancestral domain can only be put forward by people representing "real" indigenous institutions and governance systems. This revitalization of *adat* institutions has taken place in West Lampung, Mentawai, Toraja, Sanggau, West Lombok, Kei, Buru, Flores and many other places. In Kei and Buru (two Moluccan islands), the role of indigenous institutions has proved effective in settling or preventing conflict.

Once it has spiralled out of control, decisive government intervention and attempts to restore normalcy may be the only way to break the vicious cycle of mutual self-destruction. In such a situation, the state should be there to assist the people in solving problems that are proving too difficult to be solved without outside intervention. However, where people demonstrate the capacity to take care of their own problems and govern their lives themselves, the state should confine itself to assuming a mere facilitating role. The government of the

District of West Lampung is among those newly-empowered local governments that have shown remarkable success in collaborating with indigenous peoples. It has gone quite far in developing community governance based on the functions of indigenous institutions and the role of indigenous leaders. This humbleness and willingness to learn from the local people is a far cry from the national government headed by Megawati Soekarnoputri, whose distance from the needs and problems of ordinary citizens have been laid bare by the arrogant comments some of its representatives had to offer after the great flood that drenched Jakarta and other places in Indonesia in early 2002.

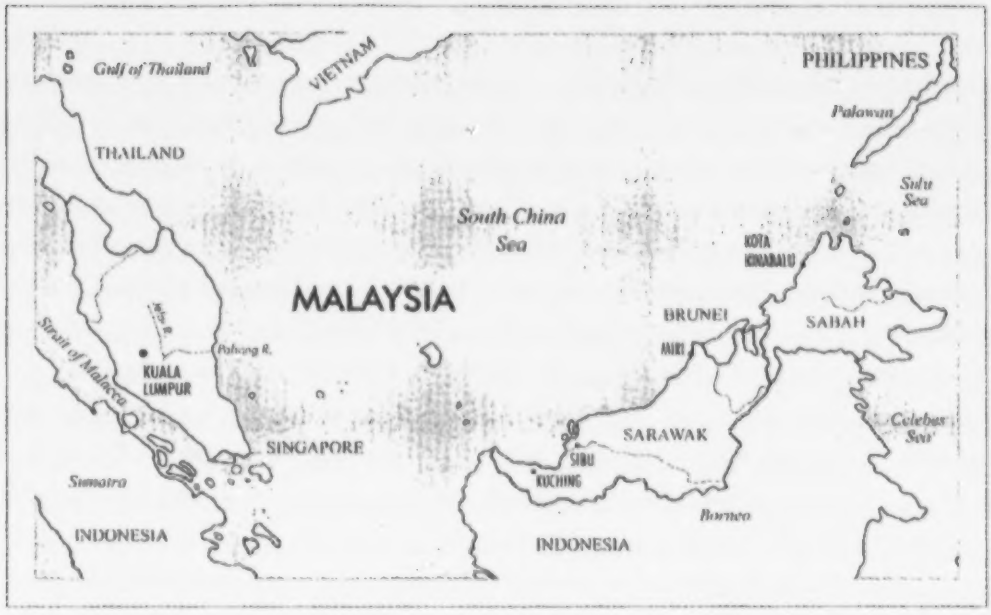
Notes and references

1 *Undang-Undang Republik Indonesia Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah*. 1999. Jakarta: Panca Usaha.
2 Ibid. This and all other translations in the article are the authors'.
3 *Undang-Undang Dasar Republik Indonesia Tahun 1945 Setelah Amandemen Kedua Tahun 2000*. 2001. Bandung: Pustaka Setia.
4 Ibid.
5 *Panduan Umum Pengembangan Kesejahteraan Sosial Komunitas Adat Terpencil* 2000. Direktorat Kesejahteraan Komunitas Adat Terpencil, Deputi Bidang Peningkatan Kesejahteraan Sosial, Badan Kesejahteraan Sosial Nasional.
6 *Panduan Teknis Persiapan Pemberdayaan Komunitas Adat Terpencil*. 2000. Direktorat Kesejahteraan Komunitas Adat Terpencil, Deputi Bidang Peningkatan Kesejahteraan Sosial, Badan Kesejahteraan Sosial Nasional.
7 For an exposition of the special problems faced by the Kubu or Orang Rimba and efforts to assist them, see Øyvind Sandbukt, "Deforestation and the People of the Forest: the Orang Rimba or Kubu of Sumatra". *Indigenous Affairs* No 2/2000.

MALAYSIA

Landmark court decisions

The year in review saw two landmark decisions in the Malaysian High Courts that will hopefully begin a process aimed at recognising the right of indigenous peoples to their traditional territories.



In the first case, the High Court in Sarawak held that the four Iban natives of Rumah Nor Nyawai longhouse were entitled to exercise their native customary rights over disputed land, the boundaries of which had been drawn by community mapping. The four had sued Borneo Pulp Plantation and Borneo Pulp and Paper Sdn Bhd for trespassing on their land. They also sued the Bintulu Division Superintendent of Lands and Surveys as the authority that had issued land titles to the defendants.

On 12 May 2001, the Miri High Court acknowledged that the native customary rights of the Iban had always been recognised by the laws of Sarawak, from the time of Brooke right up to Sarawak becoming part of Malaysia. The court therefore ruled that native customary rights, which are codified in the East Malaysian states of Sabah and Sarawak, existed long before any modern-day legislation came into force, and such legislation therefore was only relevant in determining how much of these native customary rights had been extinguished. As such, the native customary rights of the Ibans to their settlement (*pemakai menoa*), farmland (*temuda*) and primary forest (*pulau*) had not been abolished by any legislation and therefore these rights still existed until today. The decision, however, is going to an appeal.

In the second case, the High Court in Shah Alam ruled on 12 April 2002 that the Orang Asli of Peninsular Malaysia have a proprietary interest in customary and traditional lands settled by them (but not the "jungle at large") and that they have the right to use and derive profit from the land. The court also ruled that Orang Asli land enjoyed

BEST COPY AVAILABLE

constitutional protection under Article 13(1) relating to property. Appropriation of Orang Asli customary land as such could only be undertaken under the Land Acquisition Act and, if done so, compensation had to be paid according to the rates prescribed under the Act. In this case, seven Temuan Orang Asli in Kampung Bukit Tampoi, Selangor had sued the Federal and State Governments, United Engineers Malaysia Berhad (UEM) and the Malaysian Highway Authority (LLM) for the loss of 15.39 hectares of their land, with crops and dwellings on it, when the land was trespassed upon in 1996 to build a highway leading to the Kuala Lumpur International Airport.

The High Court held that the eviction of the Orang Asli was unlawful and that the present occupiers of the land – viz. UEM and LLM – had committed trespass and needed to pay damages for trespass. In another significant ruling, the Court held that the government owed a fiduciary duty towards the Orang Asli and that this was breached when it acquired the land without adequate notice and by only compensating them for the loss of their crops and dwellings.

In both the Iban and Temuan cases, the court accepted maps (showing details of the boundaries and the cultural sites) drawn and produced by the community. However, in an undisguised attempt to prevent such community involvement in producing their own maps of their customary lands, the Sarawak state government had amended the law to state that only those maps produced and certified by a qualified surveyor could be introduced into a court of law. Given the exorbitant costs of such surveys, there is reason to believe that these amendments to the legislation were aimed at thwarting more communities from filing similar suits for native title.

Continuing threats

Nevertheless, aside from these important landmark decisions in the High Court, threats to the traditional territories of the indigenous peoples in Malaysia continue to occur from a variety of sources. Twelve Penan communities in Central Baram, for example, are protesting against the development of oil palm and wood projects on their customary lands, promoted by a private company, Shin Yang Forestry Sendirian Berhad, which was purportedly given the license to the area under the so-called "*Konsep Baru*" (New Concept) of development programming on native land in Sarawak. On 18 April 2002, 32 Penans were arrested and brought to the Marudi police station for setting up

270

blockades and protecting their land. While most were eventually released, eight still remain in detention and are to be charged in court.

In Peninsular Malaysia, the planned construction of several dams (such as the Kelau dam in Pahang and recently-announced dams on the Jelai and Tembeling Rivers) invariably encroaches on Orang Asli traditional territories. In Sabah, the government is going ahead with the clearing of 220,000 hectares of forest in Kalabakan, Tawau, which are home to several native groups. This is despite the fact that the original reason for such extensive forest clearing – the siting of a US$5.3 billion Sabah Pulp and Paper mill there – has been shelved for financial reasons.

At the national level, a coalition of 14 indigenous, non-governmental and community organisations – Jaringan Orang Asli Dan NGOs Tentang Isu Hutan (JOANGO HUTAN Collective of Indigenous Communities & NGOs on Forest Issues) – voiced strong concerns and objections to the Malaysian Timber Certification Council (MTCC) over the ongoing attempt to draw up a Malaysian Criteria and Indicators (MC&I) for timber certification. However, when it became clear that their participation in the process was being regarded as an endorsement of the diluted and pro-timber lobby certification criteria, the coalition withdrew from the process, thereby putting the whole Malaysian-style timber certification process in danger of not being recognised internationally.

In essence, the process was highly flawed in that it did not protect and recognise the rights of indigenous peoples and local forest communities who reside in these areas and who depend on the forests for their sustenance. In the case of Sarawak, for example, conceding to the establishment of Forest Management Units (FMUs) – the core units that are to be the basis for supposedly sustainable forestry management – effectively means accepting that all native customary rights in these areas would be automatically extinguished. The goal of the MC&I – to sell timber to high-paying European markets – as such does not promote the interests and rights of indigenous peoples. This alone, the coalition felt, was sufficient reason to withdraw from the process.

Thus, while there are commendable moves in the courts of the land to recognise indigenous rights to land and livelihood, the reality is that encroachments upon and appropriation of indigenous territories is still proceeding ahead with even greater vigour.

271

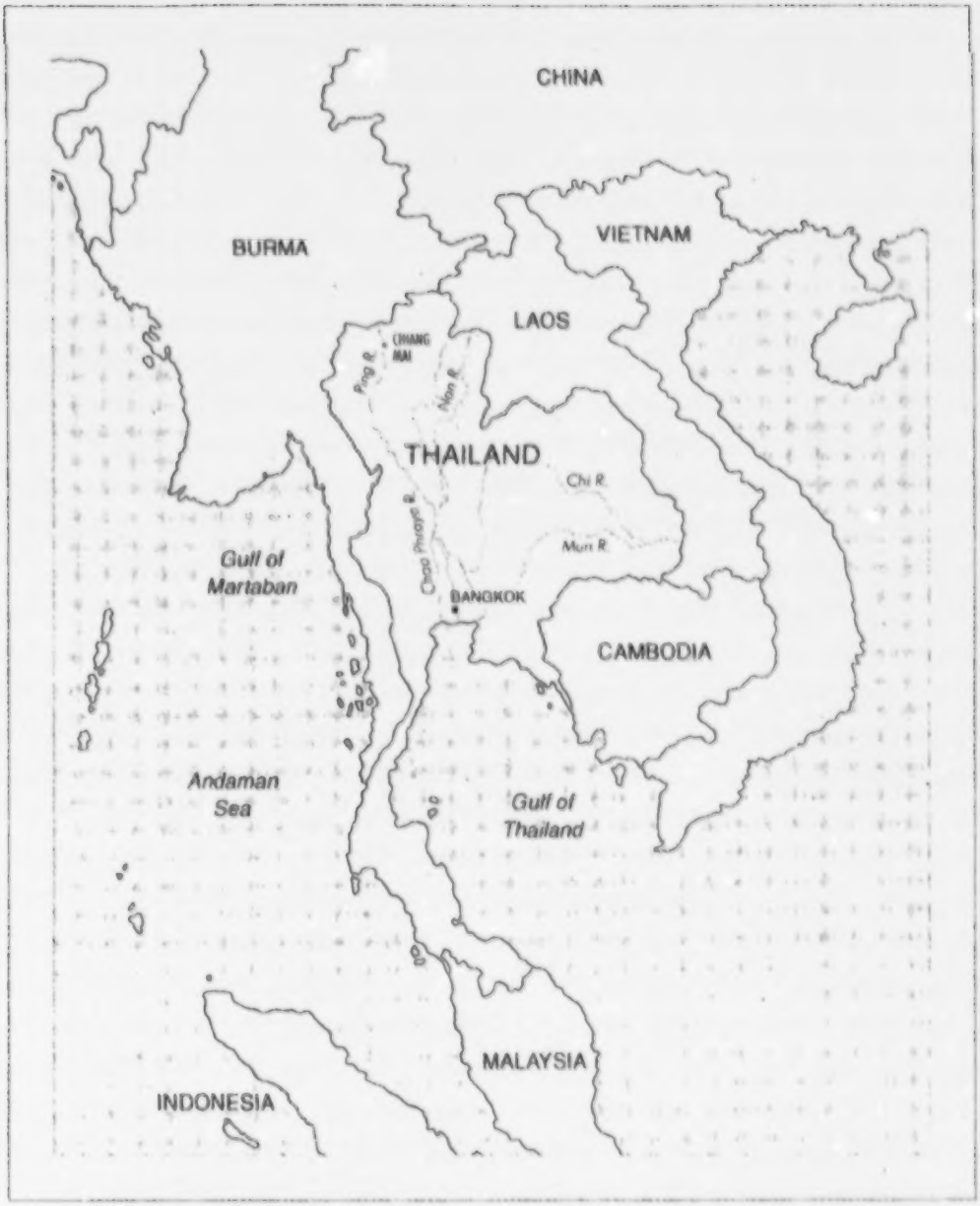
THAILAND

The north of Thailand lies in an ethnically diverse area where national boundaries were drawn by external forces, leaving many ethnic groups divided between nation-states. This has inevitably led to a weakening of their ability to present unified voices in the political systems of the countries in which they live.

The peoples of northern Thailand

This problem is shared by the peoples of northern Thailand, referred to by the government as *chao khao,* or "highland peoples". The use of this term within official Thai discourse reflects the prevailing stereotype of a single group of "highlanders", which denies the rich cultural, ethnic, historical and linguistic diversity of the indigenous and tribal peoples it refers to. While the official figure lies at a little over 860,000 people, unofficial estimates of the total population of the indigenous and tribal peoples put them at over one million. Even this number is, in fact, too low since it refers only to those groups that have been recognized as "highlanders".[1] Groups such as the Dara-ung, the Shan and the Palong are either dismissed as too small in population to be officially recognized, or are defined as "immigrant populations". Those groups recognized by the Thai government as *chao khao* all have very different histories and cultures. The Karen and Lua peoples have lived in northern and eastern Thailand for centuries, predating the arrival of the Tai-speaking groups (such as the presently dominant Thai). Today, they share the land with traditionally migratory peoples such as the Hmong, Lisu, Lahu and Akha, who have since long crossed and re-crossed national borders that were unknown or unrecognized by them.

The complexities of the issues involved and the inaccuracy of definitions currently used are not simply matters of academic concern. They have real and often devastating impacts on the lives and futures of indigenous and minority peoples throughout the region, a fact that is attested by the continued violence and unrest in bordering countries. The Thai government's attitude towards highland peoples was traditionally one of distance, and an official approach to governing the highland areas was late in coming. For quite some time after the establishment of the Thai nation state, border areas were still viewed as before: as areas of lesser influence in which the role of the



state was primarily to guarantee allegiance to itself. Only in the 1960s, when the issue of opium production began to gain international attention, and as population increase resulted in encroachment by lowland farmers on the traditional agricultural lands of the highland peoples did the government turn its attention to these remote areas. Insurgency in some of the border areas and the neighbouring countries was also cited by the government as a cause for its concern with the highland areas.

BEST COPY AVAILABLE

This resulted in a three-pronged view of highland peoples as a threat to national security, a threat to natural resources and as the primary producers and traders in illicit drugs. This view has solidified over the years into a deep-rooted official prejudice that continues to inform the policies and laws of the government. These form the social and political environment in which tribal and indigenous communities have had to struggle to maintain their identities within the Thai nation. The struggle has taken the form of political pressure for a voice, for education programs reflective of community and cultural heritage, and for recognition of traditional forms of resource management and land rights, issues essential to community sustainability and security. The results gained from the relatively recent assertion of a formal political presence in Thailand have been considerable, yet the obstacles faced remain firmly in place.

Political participation

Important for opening up a space in which indigenous and tribal peoples could claim a voice in Thai politics was the "peoples constitution" of 1997. This constitution was a watershed event in the development of popular participation in democracy and a source of potential empowerment for marginalized groups throughout Thai society. It was drafted with high levels of participation from the people and enshrines the right of popular participation in decision-making processes at every level of government in the nation. This right has been embraced by indigenous and tribal organizations and they are currently taking an active role within the Thai political system. In 1997, the individual networks of six different tribal peoples combined to form the Assembly of Indigenous and Tribal Peoples in Thailand (AITT), and this Assembly has acted as a formal negotiating partner with the government on behalf of the indigenous and tribal peoples. Its role and characteristics are somewhat unique, as it is formed by thousands of scattered communities who, through their chosen representatives, establish its mandate and its priorities. A number of indigenous and tribal non-governmental organizations work as the Assembly's secretariat when necessary and it has proved to be a strong forum for exchange and mutual assistance in the years since its foundation. Early in 2002, the Assembly represented the interests of the six tribal networks in direct negotiations with the Thai government, demanding that the issue of conflicting and non-existent legal status documents be addressed and that the right to participation in establishing development objectives in indigenous lands be recognized.

The Assembly also joined forces with the Northern Farmers Network (NFN), a coalition of northern farming communities, in asking the government to continue its support for the Community Forestry Bill currently under consideration. This approach of building coalitions with lowland Thai communities has been an ongoing process for over ten years and the NFN has proved a powerful forum for presenting indigenous and tribal issues to the government. Working predominately on land rights and resource management in forested areas, the NFN has been a leading organization in the development of the Community Forest Bill and in advocating formal recognition of traditional natural resource management techniques.

Legal status

Aside from the Community Forest Bill, two other issues have taken the foreground in the AITT's work over the past year: the issue of personal legal status and the issue of participation in development planning. One of the early achievements of the AITT was the successful conclusion of a process of negotiation with the government, which led to the opening of a one-year period for rapid appraisal of petitions for citizenship and other personal legal status. This period stretched from 29 August 2000 until 28 August 2001 and each of the tribal networks, together with non-governmental organizations and community organizations, began the long process of training and instruction of community members on the documentation required for submitting petitions.

Due to historical and structural reasons, a confusing array of different possible "legal statuses" for members of tribal and indigenous communities exist, and tens of thousands of people remain without any official status in Thai law. These issues of citizenship and legal status are of central importance, for without formal legal status a person has no legal protection of their basic rights, such as access to services or freedom of movement.

On a practical level, the problems are immense. The one-year window of opportunity in which citizenship and legal status issues were to be resolved was woefully short and there remains a lack of understanding about the procedures and requirements for citizenship application. The devolution of authority to consider petitions at local district offices was instrumental in addressing at least some of the practical constraints facing highland communities. The need for si-

275

multaneous work on a policy level is clear, and coalitions between the AITT, the NFN and the Northern Federation of Peasants were formed early in 2002 to try to bring these policy issues into a debate between the people and the government. Again, the issue of indigenous and tribal rights to legal status was brought to the negotiating table and, with the support of lowland Thai groups, agreements were reached with government representatives on the policy changes needed to facilitate a practical solution to the issue.

Land and forest rights

In addition, and closely related to the lack of recognition of tribal and indigenous peoples as part of wider Thai society, there is a lack of recognition of the right of tribal and indigenous peoples to have access to and control over the management of their traditional lands and resources. The vast majority of tribal and indigenous communities are found in highland areas, where most of the remaining forests that once covered much of the north, north-east and western regions of Thailand are found. Although inhabited and cultivated by indigenous and tribal communities, much of these areas have now been declared protected areas, and consequently fall under the jurisdiction of the Royal Forest Department. Since the establishment of the Royal Forestry Department in Thailand at the beginning of the 20th century, official responsibility for the conservation of all forested areas has been vested in this agency. It is this centralized concept of natural resource management and the inappropriate view of protected forests as "empty forests" that acts to deny and limit indigenous land rights in Thailand.

The Assembly of Indigenous and Tribal Peoples, together with a range of other peoples' organizations in northern Thailand, submitted a petition regarding forest and land rights issues to the government in April 2002. Despite the strong alliance between lowland Thai groups and indigenous and tribal peoples, direct negotiation with the government failed to produce any results. The issue of indigenous rights over resource management has seen greater progress, with the Community Forestry Bill being developed over the course of the past ten years and presented to the government for consideration in 2000. With years of experience in political lobbying, the Northern Farmers Network and the other organizations sponsoring the Bill succeeded in having the Bill passed by the House of Representatives in late 2001 and it passed before the Senate in early 2002.

276

If the Community Forest Bill were passed by the government in its original form, it would be the strongest legal instrument available to indigenous and tribal peoples for the protection of their rights to their resources and lands. Although it places a considerable burden of proof on indigenous and tribal communities, and provides only for "government-approved stewardship" and not any real recognition of *a priori* rights, it has the potential to ensure some security of land tenure. However, in April 2002 the Senate saw fit to amend the Bill, removing Article 18 and, with it, the right of communities living in government-declared conservation areas to claim the right, not even to own but simply to manage their community forests. The Senate further restricted and distorted the intention of the Bill by limiting rights to gather forest products and removing the right to change the boundaries of community forests in the future.

Such political and legal processes in claiming land and resource rights is one of two strategies employed by indigenous and tribal communities. The second strategy of equal importance is an ongoing effort to establish a general recognition within the Thai public that highland forest communities are capable and responsible managers of the forest resources of the nation. Prejudice against highland communities and the continuing view of them as "forest destroyers" has been part of the experience of indigenous and tribal peoples for decades. Addressing these negative stereotypes is a long-term battle, but one that has seen some success. Dissemination of information about traditional forestry practices and public fora to explain the concept of sustained use and inter-related management on which traditional systems are based are increasingly being accepted in mainstream media.

It is not only in legal and public fields that traditional resource management is being increasingly discussed. Within communities themselves, clearer articulation of the principles of forestry management is required, as part of the process of pushing for public acceptance. This has resulted in aspects of modern forestry management being adopted and adapted for use in indigenous and tribal communities. The creation of models and maps to display traditional management principles in a manner accessible to the mainstream is now found in almost every highland community. The idea of traditional management as a dynamic and evolving process is accepted at a grassroots level, which again serves to strengthen the fight at a policy and legal level.

277

The future

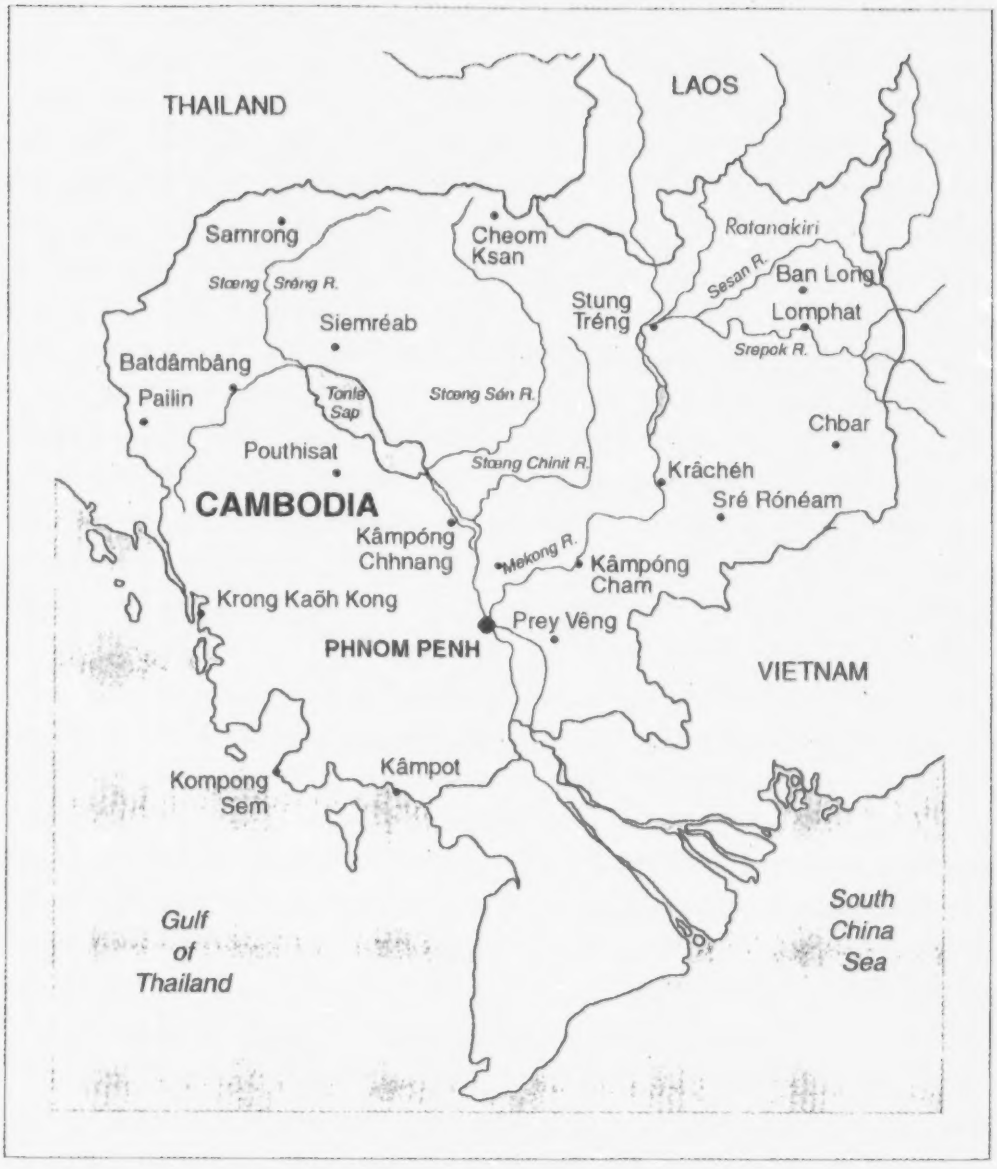
One of the gains achieved during the past year is of enormous importance for the future of indigenous and tribal movements in Thailand: The political role claimed by, and given to, indigenous and tribal communities has reached a level whereby communities are able to negotiate formally with their elected representatives. This is undoubtedly due, at least in part, to the support and solidarity existing between a range of poor northern communities and the Assembly of Indigenous and Tribal Peoples of Thailand, along with the involvement of indigenous communities in organizations such as the Northern Farmers Network. However, despite impressive gains over the past year, the obstacles facing indigenous and tribal peoples in northern Thailand remain considerable. The gains that have been made are largely the result of persistent work over the decades rather than years, and yet more decades will still be needed.

Note

1 The most recent list of March 2002 from the Tribal Statistics, Service and Dissemination Section, Tribal Research Institute, Chiangmai, includes ten tribes and a total population figure of 899,749.

CAMBODIA

The year 2001 saw numerous advances by indigenous peoples' movements in some provinces of Cambodia in terms of their land rights and protection of the forests and natural resources they depend on for their livelihoods. A new land law was passed in July 2001 that included provisions for indigenous community land tenure and, in March 2002, indigenous villagers in Ratanakiri province prevailed over a military general who had reportedly attempted to defraud them of their ancestral land. Local activists and indigenous community representatives launched advocacy campaigns to monitor the downstream impacts on highland communities of Vietnam's Yali Falls dam, to protect the right to collect non-timber forest products, and to



establish associations for the protection of community forests and fisheries.

At the same time, economic pressure continued to intensify on the resource-rich north-eastern region of Cambodia and its indigenous inhabitants, as plans moved forward for logging and commercial plantations, hydro-power projects and migration of lowland Khmer to the highlands. The trend towards development was illustrated by a comment made by Prime Minister Hun Sen in January 2002, who stated that his dream for the year 2020 was for Cambodia's north-east – now inhabited largely by indigenous communities – to become one of the country's "economic pillars".

BEST COPY AVAILABLE

National policy

Indigenous communities in some provinces, such as Kompong Thom and Preah Vihear, where few non-governmental organizations (NGOs) are based, are isolated from national advocacy networks. In north-eastern Cambodia, local and international NGOs working with indigenous communities, together with various government departments, have attempted to increase indigenous participation in national and local policy and program development for the highlands.

In March 2001, indigenous community representatives played a strong role in an international conference in Ratanakiri province on "Strengthening Partnerships in Community Natural Resource Management". Conference participants recommended that government departments and NGOs should consult with indigenous communities on program planning, undergo cultural sensitivity training, make stronger efforts to employ and train indigenous staff members and use local languages in development work.

In early 2002, a newly-established Department of Ethnic Minorities Development within the Ministry of Rural Development began to address threats to indigenous communities through loss of land and forests due to commercial plantations, logging and immigration. A draft national policy on indigenous people that had lain dormant since 1997 was revived for discussion and possible passage by the Senate.

Land rights

Land rights and the arbitrary confiscation of ancestral lands remained one of the most pressing problems for indigenous communities throughout Cambodia.

One example was a large land conflict in Sandan District, Kompong Thom, where a rubber plantation in Tumring commune took 900 hectares from a community predominantly composed of Kuey indigenous people in late 2001. In March 2002, the company clear-cut an area villagers had marked for community forest, felling about 700 resin trees that the Kuey relied on for their livelihood.

North-eastern Ratanakiri province faced dozens of cases of land speculation and confiscation. In a major land rights case that was first brought to court in March 2001, Tampuen and Jarai villagers in Bokeo district of Ratanakiri launched a legal appeal against a military general who had fraudulently obtained title to their ancestral lands,

putting some 900 villagers at risk of landlessness. In March 2002, after a delegation of the villagers met with King Sihanouk, Prime Minister Hun Sen instructed the Ministry of Land Management to purchase the land from the general and return it to the villagers, in exchange for the villagers dropping their lawsuit against the general. In this precedent-setting case it was the first time that indigenous people had challenged a military officer over such a large amount of land. Press attention and advocacy by local and international NGOs helped draw public attention not only to the Bokeo land case but to the widespread problem of indigenous land conflicts throughout the highlands.

In July 2001, the Cambodian National Assembly passed a new land law following extensive consultation with Cambodian and international NGOs and indigenous community representatives. The new law contains provisions for indigenous communities to gain title to their land, either in the form of individual titles for each family or as a communal title for the whole community. Indigenous community land is defined not only as residential and agricultural land but also fallow plots left in reserve as part of the traditional shifting cultivation system.

The right to resources

The protection and management of natural resources increasingly emerged as an issue during 2001, as Cambodian NGOs and local communities, including indigenous representatives, organized advocacy campaigns on behalf of community forests and fisheries, forest policy reform and the right to collection of natural resources such as resin and other non-timber forest products.

Khmer and indigenous communities in Stung Treng, Ratanakiri, Mondolkiri and Kratie who rely on the collection of resin for their livelihoods found representation in the form of a newly-created Cambodian NGO that works to protect the right to collect and sell resin. In April 2001, the Department of Forestry issued an instruction calling for the temporary suspension, in all forest concessions, of cutting of all trees from which people collect resin. Despite this, the resin trade remained under enormous threat as local communities continued to find themselves in direct competition with logging companies for the trees.

Highland communities in Ratanakiri and Stung Treng province, together with NGO partners, launched a network of indigenous activists along the Sesan River in north-eastern Cambodia to monitor and conduct advocacy with regard to the social and environmental impacts of the 720 MW Yali Falls dam, located in Vietnam. The official

281

Environmental Impact Assessment for the dam only examined the impacts eight kilometers downstream, thereby dismissing the possibility of impacts in Cambodia. However, major negative effects from the dam were felt even before the dam became fully operational in 2001. These included unnatural surges and dramatic fluctuations in the river's water level, leading to loss of fishing equipment and drowning of humans and animals; and changes in the water quality that led to increased skin diseases and illness.

Once NGOs and government officials in Ratanakiri began to receive increasing numbers of complaints from villagers living along the Sesan about the life-threatening changes in the river, several independent studies were conducted with the support of the local government to document the villagers' claims and analyze the social and environmental impacts of the dam in Cambodia.

The Yali Falls Dam is just the first of many dams planned for the Sesan River. The Vietnamese government has announced that in 2002 it will begin construction of another dam, the Se San 3, located about twenty kilometers downstream of the Yali Falls Dam.

Logging and community forestry

During 2001, pressure mounted on the government to suspend operations in all forest concessions as a result of what was perceived as inadequate progress toward developing sustainable forest management plans. Despite this announcement, illegal logging by concessions, as well as soldiers and police, continued to pose a major problem for communities wishing to manage their forest.

A new forest law drafted in 2000 progressed little during 2001. NGOs and local communities continued to have concerns about the draft law, which appeared to promote or justify the use of large areas of forest as forest concessions, and provides the Department of Forestry and Wildlife (DFW) with incommensurate and arbitrary powers of decision regarding forest use.

At national level, work progressed on a community forestry sub-decree that can be used by rural dwellers and indigenous people throughout Cambodia who wish to claim management rights over forest land that is not included in lands that are communally titled. As of writing, a draft sub-decree was under consideration by the Forestry Department and had not yet been passed by the Council of Ministers.

Despite the lack of a community forestry sub-decree, indigenous communities, particularly in Ratanakiri, were able to obtain support

282

from local authorities and international donors for the development of community forestry associations and community-based natural resource management projects. In Ratanakiri, a number of forest areas have been mapped and approved for community use by the provincial government and handed over to community management. These have included a community environmental and tourism area at O'Chloy waterfall and a similar area around Lum Kat Lake. In January 2001, Ratanakiri provincial authorities and a representative of King Sihanouk signed an agreement with representatives of six ethnic Kreung villages that handed over the protection and management of almost 5,000 hectares of forest to the Ya Poey Community Forestry Association.

On the other hand, in Sandan district, Kompong Thom, logging companies and the Department of Forestry and Wildlife accelerated their logging activities in order to remove as much commercial timber from an area proposed for a community forest before the passing of the community forestry sub-decree. In Sandan, the DFW allowed communities to retain their trees as long as they paid the same royalties on the timber as the logging concessions.

Education

Access to and quality of education remained a primary issue for indigenous people. Indigenous children are less likely to go to school than the average Cambodian child. Many schools are not operating in the highlands and northern plains due to a lack of schools, teachers or students, many of whom are needed at home to help work on farms and around the house. Pre-teen and adolescent girls are especially affected by this. In response to these issues, a number of NGOs in Ratanakiri have started providing non-formal education integrated into development activities and focusing on issues of daily life such as health, agriculture, environment and human rights. Some of these programs have included the use of mother tongue language literacy education to enable and promote access to education. Non-formal education classes are held in nearly half of all villages in Ratanakiri.

A new project in Ratanakiri, funded by CARE Australia, has begun to develop the concept of bilingual community schools. Managed by members of the community, this pilot project will use vernacular language training as a bridge to Khmer literacy and a stepping stone to formal education.

Other non-formal education initiatives have been launched for indigenous youth in Ratanakiri, including summer youth programs

283

that focus on environmental and cultural issues in order to develop skills in research, photographic documentation, musicology and report writing. In response to the growth in tourism in Ratanakiri, young people are not only learning English but also gaining skills in how to document their culture and explain the importance of the environment to tourists in a program funded by the Australian Embassy.

Health

Health and nutrition indicators among indigenous communities in Cambodia are among the worst in the country. In Ratanakiri, the infant mortality rate is 187:1000, almost twice a high as the national rate of 95:1000.

Malaria is the main health problem in Ratanakiri. Tuberculosis, diarrhoeal diseases, anaemia, childhood malnutrition and acute respiratory infections are also major health concerns. Indigenous communities are at particular risk of HIV / AIDS because of their lack of access to information about the disease and its prevention.

Increased advocacy

Over the past few years, indigenous highlanders in some parts of Cambodia have become more familiar with attending and conducting meetings, participating in national and provincial workshops and learning negotiating skills, understanding that their direct involvement in lobbying on indigenous highlanders' issues at national level could enhance their voice.

An indigenous peoples' resource management advocacy group has been operating since early 2001. It has focused on improving local knowledge of the laws and policies that affect community natural resource management and making indigenous communities' viewpoints heard at the provincial and national level, especially with regard to natural resource management laws and policies. In Ratanakiri, a team of indigenous people, selected by the communities, has begun to work with government land rights information projects, offering legal and human rights information to villagers in their own languages.

An Indigenous Women's Network Ratanakiri (IWNR) was created in 1998 to help indigenous women gain more of a voice in decision-making in communities where village governance has traditionally consisted of male-dominated councils of village elders.

284

Despite these advances in advocacy, indigenous people remain under-represented in national and provincial government. A rare example is Bou Thong, an ethnic Tampuen from Ratanakiri who is a member of the National Assembly. With his encouragement, indigenous communities in Ratanakiri have begun to launch an Indigenous Highlanders' Association to advocate on behalf of cultural preservation and other issues, focussing particularly on consulting local communities in order to obtain the views of women, young people and the elderly. A first phase of consultation ended in early 2002, involving some documentation of village histories and customary law as well as a survey of community concerns and aspirations. Initial results show that major concerns included the loss of land and forest resources, the impact of the Yali Falls dam and the lack of indigenous representation in government and educational opportunities. Much work remains to be done, however, with regard to indigenous advocacy. While indigenous communities are gaining a voice in some areas, particularly Ratanakiri province, indigenous rights issues have a much lower profile in the northern plains and the mountainous regions in the south, where there is much less support for indigenous people from NGOs and local governments.

VIETNAM

Conflicts over land rights and religious freedom characterized much of the year in the indigenous areas of Vietnam, a country in which the government does not authorize the creation of independent advocacy groups. In February 2001, the government responded harshly to unprecedented mass protests conducted by indigenous peoples in the central highlands calling for greater land rights, religious freedom, and independence.

The Vietnamese Communist Party's election of Nong Duc Manh, a member of the Tay minority, to the nation's top post in April 2001 as General Secretary of the Party did not appear to immediately translate into a more progressive and participatory approach by the government towards indigenous minority communities.

Government policies continued to stress the eradication of traditional shifting agriculture, utilized by many indigenous highlanders,

285

replacing it with sedentary cultivation of paddy rice and cash crops. In addition, ethnic minority Christians in the northern and central highlands suffered government persecution.

Large dam projects in the northern Son La province, as well as in the central highlands, threatened to negatively impact on the livelihoods of indigenous peoples living along the rivers and to displace thousands of highlanders from their ancestral lands.

National policy

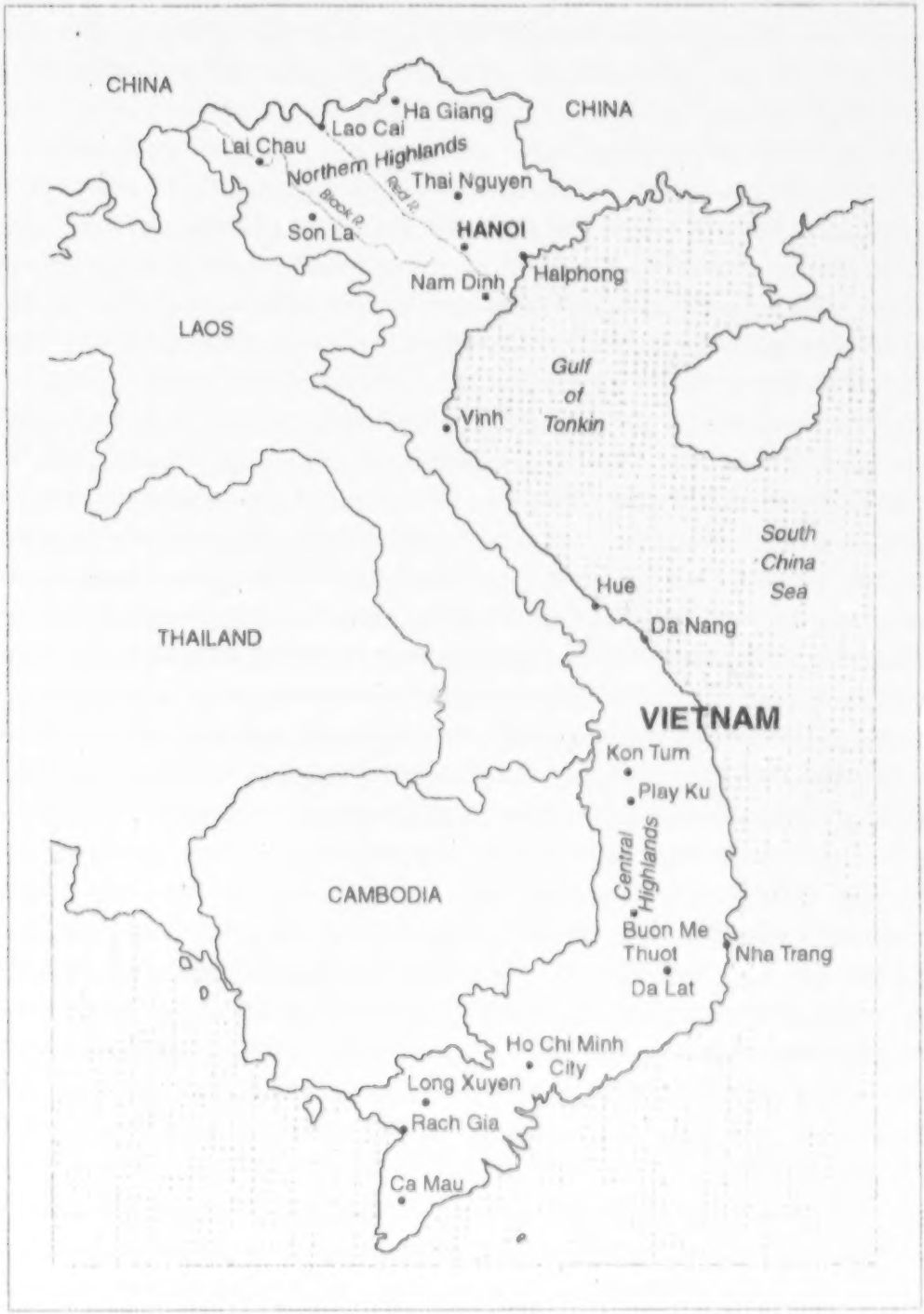
The Vietnamese government made numerous attempts to address the discontent among indigenous communities in the central highlands during 2001, for example, by promising to speed up the titling of land, increase ethnic minority radio broadcasts and offer more educational opportunities to ethnic minority peoples. But, generally, the official approach continued to be one of pressing for the "sedentarization" of indigenous minority farmers. In addition, indigenous communities that have converted to evangelical Christianity – particularly those in sensitive border areas, such as the Hmong in the northwest and the Jarai, Mnong and Ede in the central highlands – came under heavy surveillance and repression.

In September 2001, Prime Minister Phan Van Khai called for more economic development and farming incentives in Vietnam's poorest region, the six provinces of the northern highlands. These provinces, he said, "should also help their inhabitants change backward habits in production and life, and create favorable conditions for the locals to enhance economic growth."

In October, the state's Vietnam News Service announced that the Ministry of Agriculture and Rural Development and the Department for Sedentary Farming, Life and New Economy aimed to wipe out "traditional nomadic life and swidden agriculture" among mountain-dwelling ethnic minorities by 2005.

CEMMA, the government body that oversees ethnic minority programs, was plagued by an ongoing corruption scandal. In early 2001, the Vietnamese Communist Party censured six senior CEMMA officials on charges of bribery. In November 2001, another twelve people were tried in Lai Chau province on charges of embezzling CEMMA funds intended for poverty programs in the northern highlands.

286



Grievances over land

Land conflicts were a problem throughout Vietnam, including in indigenous minority areas. Government-organized resettlement schemes,

BEST COPY AVAILABLE

along with spontaneous migration, have quadrupled the population density of ethnic Vietnamese and other migrants in parts of the central highlands since 1975, creating intense pressure on the land and natural resources. Lacking official land use certificates, indigenous people have been increasingly squeezed off their land. Tensions increased in January 2001 with reports that as many as 100,000 more people, mostly ethnic minority peoples from the north, might be resettled in the central highlands to make way for the Son La hydro-power project. At the same time, the economic base of the highlands, pushed towards coffee production over the last decade, has been dealt a strong blow by the plummet in international coffee prices over the last three years.
In the past, many indigenous peoples in the central highlands supported themselves on at least several hectares of land per family, on which they practised swidden agriculture. As lowlanders or ethnic minorities from other parts of Vietnam began to encroach on their land, or as state plantations displaced them, such practices became untenable. Today, most highlanders eke out a living by farming rice and, perhaps, a small cottage garden of coffee and peppers on less than a hectare of land, making ends meet by trading in the market or working as laborers for the growing population of ethnic Vietnamese in the region. Any disruption to the household economy - be it a fine imposed for attending a church service or confiscation of a portion of a rice field - can have disastrous consequences on a family's economic survival.

Over the past ten years, local authorities have acquired vast swathes of agricultural land for commercial development, sometimes forcing indigenous highlanders to sell, or by buying from indebted peasants at prices far below the market value. The farmers' loss of livelihood, inadequate payment for land and confiscation of property by local authorities have all fuelled intense anger among indigenous highlanders, particularly over the last decade. The highlanders' resentment at the loss of land has been compounded by the fact that they are finding themselves losing out to the new migrants in terms of education, employment and other economic opportunities.

The central highlands unrest

In February 2001, several thousand members of indigenous minorities (including Jarai, Ede, Bahnar, Mnong and Koho) conducted demonstrations in the central highland provinces of Gia Lai, Dak Lak, Lam Dong and Kontum calling for independence, a return of ancestral

land and religious freedom. Vietnamese authorities deployed thousands of police and soldiers to disperse the protesters. According to Human Rights Watch, in the months following the demonstrations, security forces arrested hundreds of highlanders, sometimes using torture to elicit confessions and public statements of remorse from protest organizers. They also targeted religious gatherings, closed churches, and arrested religious leaders, equating the evangelical Protestantism followed by many of the highlanders with anti-government organizing. In one incident in the Jarai village of Plei Lao in Gia Lai province in March 2001, after raiding the village to break up an all-night Christian prayer meeting, security forces fired into a crowd killing one villager. The police then burned down the village church.

At least thirty-four of those arrested in connection with the protests were tried and given heavy prison sentences during trials conducted between September and November 2001. As of early 2002, ongoing abuses in the central highlands included harassment of Christians, mistreatment of indigenous highlanders deported from Cambodia, and a repressive police presence in the villages.

Approximately 1,500 highlanders fled to Cambodia, where they were given shelter on two sites operated by the U.N. High Commissioner for Refugees (UNHCR). Rights organizations estimate that more than 500 indigenous highlanders who fled to Cambodia during 2001 were forcibly repatriated to Vietnam, where some were arrested and beaten by the Vietnamese authorities.

Religious repression

Protestantism is said to be the fastest growing religion in Vietnam, particularly among ethnic minority peoples in the northern and central highlands. The largest concentration of Protestants in Vietnam is to be found in the latter

Prior to the arrival of Christianity in indigenous areas, the metaphysical beliefs of most highlanders centered around animism, with individual spirits believed to be responsible for the village, water, mountains, agricultural fields, large trees, rocks and other natural phenomena respectively. These spirits are believed to hold immense powers and, if properly treated, watch over the village and can ward off disease, poor crop harvests or other calamities.

From the 1960s through to the early 1990s, the government often discouraged traditional spiritual beliefs and ceremonies practised by indigenous minorities, labeling the practices "superstitious" and "un-

developed". Some highlanders were converted to Christianity in the 1950s as a result of American missionary work, although the practice waned with the reunification of Vietnam in 1975.

In the 1980s, indigenous minorities in the northern highlands began to convert to evangelical Christianity, in part as a result of Hmong language religious broadcasts by the Far East Broadcasting Company, based in the Philippines. By 1999, Vietnamese officials were estimating the number of Hmong Christians at 100,000 believers. For many Hmong Christians, their God is known as Vang Chu ("lord king"), which resonates with Hmong legends and millenarian beliefs about an ancient king who would return to earth to save them from oppression and poverty. Other Hmong Christians follow more orthodox Christian beliefs.

In the central highlands, many indigenous people became attracted to a particular type of Christianity during the 1990s called *Tin Lanh Dega*, or "Dega Protestantism", which brings together aspirations for independence, cultural pride and evangelism. It is currently estimated that between 300,000 and 400,000 indigenous people in the central highlands are Christians.

The unregistered "house churches" of the ethnic minorities in the northern and central highlands are not legally recognized by the government. As a result of the unrest in the central highlands in early 2001, the government increased its repression of Christians in Gia Lai, Kontum, Dak Lak and Lamdong provinces. In the northern provinces of Lai Chau, Lao Cai and Ha Giang, the authorities reacted defensively to citizen complaint petitions submitted by Hmong to protest religious persecution by both Vietnamese and Hmong local officials.

At least fifty minority highlanders are thought to be serving prison sentences for their religious beliefs and / or their involvement in the movement for land rights and independence. Human rights groups have received reports of minority Christians being imprisoned, fined, made to do forced labour or pressured by officials to renounce their religion. In addition, minority Christian churches have been destroyed and church property confiscated.

Impact of hydro-electric projects

In June 2001, Vietnam's National Assembly approved the controversial Son La hydro-electric project on the Da River (Black River) in the northern highlands, despite reservations expressed by some deputies about the dam's safety plans (it will be located in an earthquake-prone area) and the fact that it would displace hundreds of thousands

290

of people. In August, US$660 million were allocated for relocation costs. Initial plans called for more than 100,000 people to be resettled in the central highlands. Construction is expected to begin in 2005.

In April 2002, construction was completed on Vietnam's second largest hydroelectric project, the 720 MW Yali falls dam on the Sesan River in the central highlands (see chapter on Cambodia). The dam's powerhouse is located in Gia Lai and its reservoir is in Kontum. Since the closing of the main dam and filling of the reservoir in 1996-1998, indigenous communities living along the Sesan River in both Vietnam and Cambodia have experienced flash flooding and dramatic fluctuations in the water level, resulting in contaminated water and a loss of fish, livestock and wild vegetables along the banks of the river. Close to 7,000 people, of whom sixty percent are indigenous minority peoples (Jarai, Bahnar and Rongao), have already been displaced by the dam. Many of the resettled people report severe food shortages and a lack of cultivatable land in their new villages, as well as insufficient government compensation, according to a February 2001 study prepared by Vietnam University's Center for Natural Resources and Environmental Studies (CRES).

Plans also proceeded for Sesan 3, a 300 MW hydroelectric plant on the Sesan River between Gia Lai and Kontum provinces in the central highlands. In addition, Electricity of Vietnam began construction of a 500 KV transmission line from Pleiku in Gia Lai to Ho Chi Minh City (according to some sources to Phu Lam). A third hydroelectric project in the pipeline for the central highlands is the Kanak – An Khe power project on the Ba River, between Gia Lai and Binh Dinh provinces.

This report has been adapted in part from the Human Rights Watch report "Repression of Montagnards: Conflicts over Land and Religion," April 2002, which we gratefully acknowledge.

LAOS

In many ways, 2001 has been a difficult year for the diverse indigenous peoples of the Lao People's Democratic Republic (Lao PDR or Laos). To begin with, the Lao Government, which held its seventh Party Congress in March 2001,[1] has reaffirmed its commitment to

291

continuing its policy to eradicate swidden cultivation or "slash and burn" agricultur. Although the government originally hoped to achieve this goal by 2000, the plan is now to stop all shifting cultivation by 2005.[2] However, privately, many provincial and district officials recognise that it is unlikely that this will be possible, as approximately 80 percent of Laos is mountainous, and in many areas opportunities for lowland farming are extremely limited.

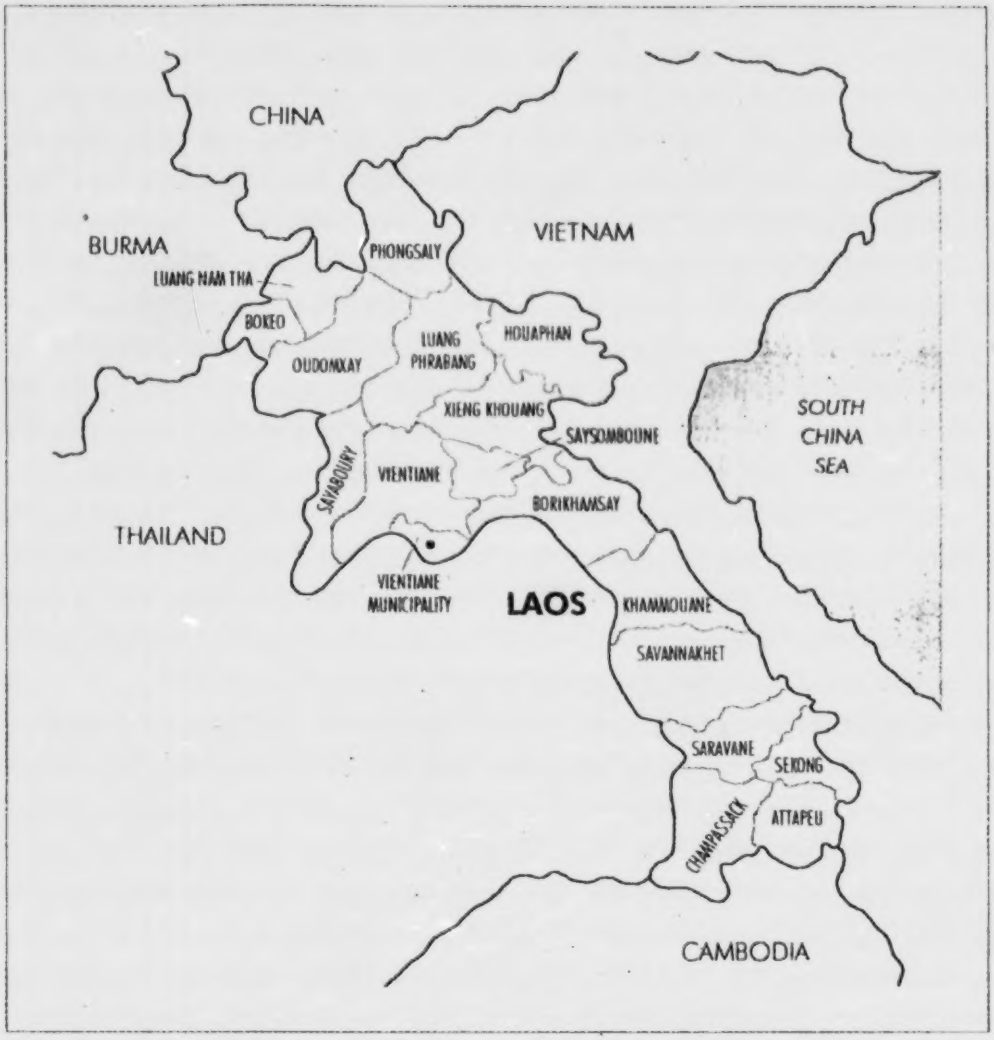
Controversial Land and Forest Allocation Programme continuing

Related to the policy to stop swidden agriculture, the controversial Land and Forest Allocation Programme continued to be promoted by the government in 2001 and, in January, 2001, the Minister of Agriculture and Forestry, Dr. Siene Saphanthong, announced that the programme had already been implemented in 7,117 out of 8,500 target villages throughout the country, including 787 villages in 1999-2000. The Minister said that the success in land and forest allocation had been instrumental in reducing areas under "slash and burn cultivation". Land areas used for "mobile swidden cultivation" were reportedly reduced from 115,000 ha in 1999 to 72,600 ha in 2000, and he said that it was expected that in 2001 swidden areas would be reduced even more.[3] Most swidden farmers in Laos are members of various indigenous groups (considered here to include all non-ethnic Lao people), many of whom are living in mountainous and remote areas and, while the Minister did not state how many of the 8,500 villages targeted for land allocation are populated by indigenous minorities, it is expected that the vast majority are indigenous.

Large-scale relocation of shifting cultivators planned

In late 2000 and early 2001, the Lao Government, as part of its slash and burn eradication programme, devised an Agriculture Development Master Plan. The Plan identified three provinces as still having substantial areas of lowland areas suitable for converting to lowland paddy, namely Khammouane, Savannakhet and Attapeu, all in central and southern Laos. Because there is much less lowland area suitable for paddy conversion in northern Laos, the government is now considering supporting large-scale relocation of shifting cultivators from the north to these provinces. In 2000 and 2001, officials told

292



farmers in many parts of northern Laos that all families without a least some lowland paddy would have to make the move over the next few years. In early 2001, as part of this effort, five ethnic Hmong leaders from northern Laos were asked by the government to go to the southern-most province of Attapeu to determine whether the land there would be suitable for them, and large numbers of their followers, to move to. While they were apparently satisfied with the land in Attapeu, in the end, Attapeu Province officials put a hold on the original plan to move 100,000 Hmong from northern Laos (mainly Xieng Khouang and Houaphan Provinces) to Attapeu. While there may still be some relocation from the north to Attapeu in the coming years, the people in Attapeu are not happy about Hmong people moving there, because the Hmong have never lived in the province. There is concern that conflicts might arise between the Hmong and the

BEST COPY AVAILABLE

Tai-Lao and Mon-Khmer language speakers who are the original inhabitants of the province.[4]

While it has still not been possible to eliminate all swidden farming, in some areas the government has reportedly been able to stop shifting cultivation. For example, on January 11, 2001, Hatsaifong District, in Vientiane prefecture, held a ceremony to present Nongphong village a certificate acknowledging the village's "termination of slash and burn cultivation".[5] Moreover, there are still strong efforts being made in some parts of the country to change the ways of minority groups. Mr. Boualane Silipanya, the Governor of the northern Lao province of Bokeo, was quoted in the Vientiane Times as saying, "If the people don't accept the new lifestyle, it is difficult to help them out of poverty, so we have to modify certain traditions that are not suitable for the new era". He continued, "This year [2002] the province will relocate people who are living in the mountains to more suitable areas in order to enable them to contribute to the national economy and upgrade their living conditions". Education and relocation have been cited as the priority areas for implementation in Bokeo in 2002.[6]

At a workshop organised between December 27 and 28, 2001, Savannakhet Province, in southern Laos, also announced that it had set aside 2.5 billion Lao kip (US$ 263,150) for land clearing for rice cultivation and livestock production in four mountainous districts populated largely by indigenous Mon-Khmer language speaking peoples. As part of this plan, land and forests will reportedly be allocated to local people "to end slash and burn cultivation". It was reported that the area under this "traditional farming method" in Savannakhet had fallen from 5,392 ha in 1996 to 4,500 ha in 2001.[7]

At another conference regarding the eradication of shifting cultivation sponsored by the Swedish International Development Agency (SIDA) in late 2001, the Ministry of Agriculture and Forestry announced that it was focusing its efforts on the northern provinces of Luang Phrabang, Houaphan, Oudomxay, Phongsaly, Luang Nam Tha and Xieng Khouang.[8] These are all provinces with a high percentage of indigenous peoples. The main objective of the conference was "to implement the plans on the reduction of shifting cultivation, the reduction of opium plantations and the escape from poverty of the people in rural areas". Dr. Ty Phommasack, the Director of the National Agriculture and Extension Service said,

> *Sayaboury Province [in northern Laos] has been more successful than other provinces in the reduction of shifting cultivation. The province*

has a lot of experience in dealing with the shifting cultivation problem, and officials are keen to share their experiences with other provinces.

Mr. Kongsy Vonsy from the Sayaboury Agriculture and Forestry Division explained,

The province has been successful in reducing shifting cultivation by nearly 100 percent, because they coordinated their activities with every concerned sector in the province and they were given good cooperation.[9]

The Lao People's Revolutionary Party's main voice, the newspaper *Paxaxon*, stated that,

The government has made slash and burn and opium production eradication policy central in the struggle to reduce poverty of the Lao people. It is the duty of the entire nation to join in the fight to rid the country of drugs and provide people of all ethnic groups with sustainable lifestyles.[10]

Yet Dr. Phommasak admitted, "We still worry about finding funds to support our problem [to stop shifting cultivation]."[11]

Poverty report raises concerns

Despite the above, in late 2000, the State Planning Committee of the Lao Government produced an important report called, "Poverty in the Lao PDR: Participatory Poverty Assessment (PPA)" with support from the Asian Development Bank (ADB). Using participatory methods, the study team surveyed a large number of villages in the poorest parts of the country, most of which are populated by indigenous peoples. This report tells a very different story regarding Land and Forest Allocation and the reduction of shifting cultivation. Although the ADB has itself been one of the main supporters of the Lao Government's policy to rid the country of poverty through putting an end to swidden agriculture, the report states that,

...in many of the poor villages in the assessment, Land Allocation implementation has not always followed policy, and has resulted in some difficulties – the main one being that fallow cycles have been reduced without livelihood substitutes, causing subsequent depletion of soil and large decreases in rice yields even though labor input remains the same.[12]

295

The report goes on to mention that, to compensate for fallow reduction, most families haves been given paddy land that could not be cultivated due to poor soils or lack of water. In addition, there was not a single instance cited of technical assistance to support either paddy or permanent upland cropping. The report states,

> *The result has been impoverishment of swidden families through decreased rice yields, and increased deterioration and degeneration of wildlife and forest resources by families attempting to compensate for rice shortages, including in some cases total elimination of some species in the area. In many areas villagers in the assessment blame Land Allocation for ecological changes, and epidemics of pests."*[13]

The authors of the Poverty study finally state that, "...the implementation of land allocation has been problematic and thus it appears in the analysis as one of the factors contributing to poverty".[14] To illustrate the problems that are occurring, the study revealed that an ethnic Khmou member of the National Assembly in Phongsaly Province had asserted that one third of the entire ethnic Khmou population in the province (over 13,000 people) had fled the province to avoid land allocation, since they believed that the programme would result in food shortages.[15]

New village consolidation policy not appreciated by indigenous communities

Although the Lao Government's policy in relation to the eradication of shifting cultivation has apparently been the main problem facing indigenous peoples in Laos throughout 2001, a new policy to consolidate villages has also emerged as an important problem for many ethnic minority peoples. In the late 1970s, the Lao Government initiated the *"Hom Ban"* or village consolidation policy. The idea was that there should be no less than 20 households per village, and communities smaller than that should be moved into other larger villages. This occurred in many parts of Laos in the late 1970s and 1980s, resulting in large numbers of villages now having multi-ethnic populations, since different ethnic groups were often compelled to populate the same village. Now, the government appears to have expanded this programme by specifying that the minimum number of families per village should be 50, although implementation of this policy largely seems to be in the northern provinces of Laos. The government

argues that in order to provide basic infrastructure, including roads, schools and health dispensaries, it is necessary for villages to be larger, so that the expense per capita of development initiatives can be reduced. However, the village consolidation programme has received a cold reception from many indigenous peoples, since many do not want to move into large villages, and villages with more than one ethnic group. Furthermore, many indigenous peoples have pointed out that when villages are large, land and forest resources often come under intense pressure due to high human population densities, resulting in resource degradation and, ultimately, hardship for villagers who are highly dependent on non-timber forest products and other natural resources for subsistence and income generation.[16]

New list of ethnic groups adopted

While the livelihood systems and the cultures of indigenous people continue to remain under intense pressure, there was at least some good news for indigenous peoples in 2001. In August 2000, the Lao Front for National Construction, the political organisation of the Party that is responsible for ethnic and religious issues in the country, adopted a new list of names for all the ethnic groups in Laos.[17] This new list is a considerable improvement over previous lists as it attempts to apply local names preferred by indigenous peoples to the various ethnic groups and sub-groups in the country. For example, the Ieu Mien of the Hmong-Ieu Mien language family are widely known in Laos as the Yao but since they do not like being referred to as the Yao, the Lao Front has now officially sanctioned the name Ieu Mien for them. The same has been true for many other groups, such as the Brao, who are commonly called the Lave, and the J'rou who are known to the Lao as the Laven. The new list recognises 49 ethnic groups for Laos, including well over 100 sub-groups. Importantly, the new list, for the first time in the history of the Lao PDR, classifies all the ethnic groups in Laos into four major linguistic families, the Tai-Lao, the Mon-Khmer, the Tibeto-Burman and the Hmong-Ieu Mien.

While officials from the Front admit that the list is not yet completely correct and that additional work will need to be done to revise it,[18] the new system represents a good start to improving the classification of ethnic peoples in Laos. One of the important aspects of adoption of the new list is that the Lao Government is now planning to abolish the broad ethnic classification terms used in the past. These include the *Lao Loum* for "lowland" Lao (mainly Tai-Lao language

297

speakers), *Lao Theung* or *Lao Kang* for "midland" peoples (mainly Mon-Khmer language speakers) and *Lao Soung* for "highland" peoples (mainly Hmong-Ieu Mien language and Tibeto-Burman language speakers). As of late 2001, the Central Politburo Bureau of the Party had already agreed to adopt the new list, and it was expected that the National Assembly would approve the list in either late 2001 or 2002.[19]

H.E. Tong Yeu Tho, an ethnic Hmong from Houaphan Province who is the Vice President of the Lao Front and responsible for ethnic issues throughout the country, said that it was necessary for the Lao Government to abolish use of the three previously used terms for classifying ethnic groups in Laos. He said that the terms were too general for the purposes of gathering government statistics. He explained that, in the past, it had been very difficult for the Lao Government to know which ethnic groups were well represented in government and which groups were the most impoverished, because the three general ethnic classification terms used in government statistics made it impossible to determine what groups the statistics were actually referring to. For example, both the Akha and the Hmong have been referred to as *Lao Soung* but the groups are culturally very different and speak languages belonging to different linguistic families (Tibeto-Burman and Hmong-Ieu Mien respectively). Although there are more Hmong officials than Akha officials, it is impossible to know what the breakdown actually is between these two groups.[20]

Mining and hydropower development

In 2001, a number of agreements were signed with foreign investors for new mining concessions, the largest being a massive gold and copper mine slated for Sepon District, Savannakhet Province, an area with a large indigenous population. The project, which is being implemented by the Lang Xang Mineral Company and the Australian Oxiana Resources Company, was scheduled to begin at the end of 2001, despite the fact that there is considerable concern regarding the potential environmental impacts of the project.[21]

2001 was a quiet year on the hydropower development front, with no new large dams being initiated in Laos. Controversial projects, such as the Nam Theun 2 dam on the Nakai Plateau in Khammouane Province, in central Laos (an area mainly populated by indigenous peoples), remained on the books of the Lao Government. However, due to delays in signing the power purchase agreement for selling electricity from the project to Thailand, and the lack of a firm decision by the World Bank

298

regarding whether they will provide a partial guarantee for the foreign investors in the project, the largest being Electricité de France International, the construction of the dam has still not begun.[22]

Notes and references

1 AFP, March 13, 2001.
2 *Vientiane Times,* November 20-22, 2001.
3 *Khao San Pathet Lao,* January 18, 2001.
4 Deputy Director of the Attapeu Province Agriculture and Forestry Division. Personal communication. July 2001.
5 *Khao San Pathet Lao,* January 16, 2001.
6 *Vientiane Times,* January 18-21, 2002.
7 *Vientiane Times,* January 15-17, 2002.
8 *Vientiane Times,* November 20-22, 2001.
9 Ibid.
10 *Paxaxon,* November 20, 2001.
11 *Vientiane Times,* November 20-22, 2001.
12 State Planning Committee. October 2000. Poverrty in the Lao PDR: Participatory Poverty Assessment.
13 Ibid.
14 Ibid.
15 Ibid.
16 Government officials and villagers in Luang Phrabang and Bokeo Provinces. Personal communication. 2001.
17 *Vientiane Times,* January 4-7, 2002.
18 Ibid
19 H.E. Tong Yeu Tho, Vice President of the Lao Front for National Construction. Personal Communication. October 2001.
20 Idem.
21 *Vientiane Times,* August 28-30, 2001.
22 *Vientiane Times,* September 18-20, 2001.

BURMA

Burma, where indigenous ethnic nationalities are in the majority,as been ruled - or rather misruled - by successive military regimes since 1962. The current regime, known as the State Peace and Development Council (SPDC), has been devoting the bulk of the nation's

resources to the army in order to engage in a long-running armed conflict, ostensibly to prevent the "disintegration" of the Union.

Burma gained independence in 1948 after diverse ethnic nationalities signed the 1947 Panglong Agreement to form the Union of Burma. Tensions and conflict between these indigenous ethnic groups and the military stem from the erosion of commitments stated in the Panglong Agreement. In this article, "ethnic nationalities" and "ethnic groups" refer to the non-Burman[1] indigenous ethnic groups who have been subjected to war atrocities and diverse human rights violations as a result of military aggression.

Secret talks, invisible outcomes

Burma was watched with cautious optimism in 2001 when the UN announced that the SPDC was engaged in secret talks with Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD). However, in the first quarter of 2002, optimism turned to frustration – Aung San Suu Kyi remains under house arrest and Burma's human rights situation has *not* improved significantly, particularly for the non-Burman ethnic nationalities. Equally important is that the talks have not been transformed into an open dialogue that includes the ethnic nationality leaders.

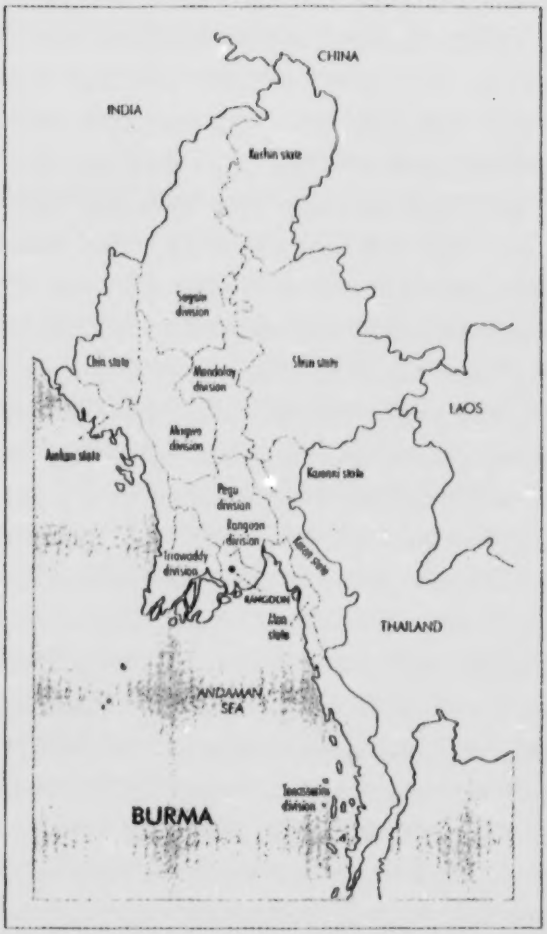
Sustainable peace can only be achieved in Burma as a result of a genuine tripartite dialogue. All ethnic groups and political parties must be represented in the national reconciliation process so that political change can be agreed upon by all stakeholders. The NLD and all ethnic nationality groups have emphatically recognized this imperative. Unsurprisingly, the SPDC has refused to accept such an idea.

In Burma's last elections (1990), the NLD won 392 parliamentary seats, ethnic parties won 83, and the military-backed National Unity Party won only 10. Despite a number of highly publicized cease-fires signed between resistance armies and the regime, human rights violations still continue, and the regime has avoided talk of (long-term) peace agreements.

Ethnic groups have been meeting outside of Burma for a long time, in order to explore their common ground and prepare for tripartite talks. One of the important bodies in this context (there are numerous strong alliances) is the National Reconciliation Program, formed in May 1999 to encourage and empower all ethnic nationalities to engage in a dialogue with each other regarding their political future.

The Ethnic Nationalities Solidarity and Co-operation Committee (ENSCC) was formed in August 2001 as a direct response to the talks

300



between Aung San Suu Kyi and the regime. Composed of representatives from seven ethnic nationalities, the committee was established to develop a framework for different ethnic groups to work together for national reconciliation along the lines of the Panglong Agreement under the heading "self-determination, equality and democracy". The ENSCC is dealing with crucial areas concerning the redrafting of the constitution and formation of a federation of eight states.

In order for ethnic groups to work effectively together for the future peace and democracy of Burma, representatives of ethnic groups must have the freedom to meet in Burma. So far, this basic right has been suppressed.

The SPDC claims that the frictions between different ethnic groups run too deep for them to be able to work together peacefully at the present time. This is obviously mere propaganda asserted in an attempt to justify their continuing grip on power. Harn Yawnghwe from the Euro-Burma office made the vital point that the regime purposely causes divisions among "national races", "implying that it is impossible to cater to everyone and, therefore, it is necessary to have a strong military to hold the country together."[2] Harn Yawnghwe continues by asserting that these "races" are constructs of the regime's oppressive rule, which has actually manipulated different dialects as being different racial types. Ethnic groups have much more in common than the regime would have anyone think.

BEST COPY AVAILABLE

Political detentions and harassment

In addition to targeting the multi-ethnic NLD, the regime has also continued to oppress political groups and activists of the indigenous ethnic nationalities. The most recent documented arrest was that of academic Dr. Salai Tun Than, 74, in November 2001 for peacefully distributing leaflets calling for democratic reform and elections on the steps of City Hall in Rangoon. He was sentenced to seven years imprisonment at Insein prison. Pastor Gracy, a Chin Baptist clergy-woman, was arrested for her alleged connections with a rebel group in July 2001 and sentenced to two years hard labour. She was later released; however, the SPDC subsequently arrested other Chin clergy. A prominent ethnic leader who had worked closely with Aung San Suu Kyi, Mr. Gin Kam Lian, Secretary General of the Zomi National Congress, was arrested on 19 March 2001 for unknown reasons.

Attacks on political personnel and most political parties continue. For example, Sai Panlu, secretary of a township branch of the Shan Nationalities League for Democracy (SNLD) was reportedly forced to resign in September 2001 after pressure from the military.[3]

Military offensives and militarization

Military offensives do not appear to have ceased, neither have such abuses as forced relocation, forced labour and looting. Armed conflict and human casualties continue in Rohingya populated areas (Arakan state), Karen State, Shan State, Chin State, Mon State (where there is a "cease-fire"), Karenni State and in Naga areas (Kachin State/ Sagaing division). It is clear that the military is waging a war not only against "armed insurgents" but against people of non-Burman nationalities in general, continuing its pattern of abuse, torture[4] and inciting fear.

On the other hand, the lack of education and jobs has created a situation where men reportedly join either SPDC or ethnic nationality armies or militias as a source of livelihood. Whatever the merits of the cause they may be fighting for, the reality remains that life in any army in Burma is not fun. It is hard and full of danger and risk, exploitation is common and choices are minimal.

Farmers in conflict areas who are lucky enough to have been spared the forced relocations find themselves caught between the demand to supply SPDC and ethnic nationalities' armies, and the needs of daily existence.

302

SPDC forces and at least 11 ethnic armed groups continue to lay antipersonnel mines with loggers and narcotics dealers now doing the same, significantly increasing the number of indistinguishable minefields in areas populated by ethnic nationality communities.

Forced labour and labour camps

Despite an order banning forced labour issued by the regime in October 2000, the violations continue unabated, in some areas with "modifications". The ILO High Level Team (HLT), which visited Burma from September 17 to October 17 found that forced labour was practiced in areas beyond central Burma, with high levels in militarized and remote areas, particularly southern Shan State & eastern Karen State.[5] The situation is also particularly severe in northern Arakan State, disproportionately targeting Muslims.

A dangerous trend that is emerging is the increasing number of labour camps. In recent years, the number of camps has grown from six to over 40. Labour from these camps is used for profit-making activities for the army as well as infrastructure developments. Civilians, significantly those from ethnic nationality areas, are arrested and given long sentences for the most minor infringements. They are then transferred to labour camps to work on infrastructure developments or plantations owned by the military. In its own weird logic, the regime sees this as a strategy to "reduce" civilian forced labour.

Education

While the education crisis in Burma affects all people, the traditionally disadvantaged border areas have been particularly hard hit. The regime has channelled national resources into propping up the army at the expense of the already impoverished education and health systems. In addition, many ethnic nationality groups are persecuted if they conduct classes to teach their own language.

The independent National Health and Education Committee (NHEC) seminar on "Children's Opportunity to Learn in the Ethnic Nationality Areas in Burma", held in April 2001 in Thailand, addressed the lack of education among many non-Burman ethnic nationality children.

303

Internally displaced people, refugees and migrants

People continue to be forcibly displaced, resulting in tens of thousands of internally displaced persons (IDPs) in 2001 alone. In addition, at least 800,000[6] people have fled Burma as refugees and undocumented migrants. A disproportionate number of these persons are of non-Burman nationality, traditionally targeted by the military. For example, over 3,000 Nagas are reported to have fled Burma in May 2001 after suffering gross human rights abuses by the military. While some took refuge in Nagaland, India, many more remained in Burma as IDPs, hiding in the mountainous jungle area near Lahe, Sagaing division.[7] Resettlement of the Wa, part of the SPDC's mass migration policy, continues to have adverse affects on people in eastern Shan State. Human rights abuses perpetrated by the Wa and military officials, such as arbitrary detention, land grabbing, and looting have meant massive displacements of Shan communities (approx. 400,000 since 1996).

While much displacement throughout Burma is a direct result of military activities, racist prejudice and vilification are also a factor. The regime continues to perpetuate the previous colonial 'divide and rule policy' supported by its Burmanization policy, favoritism for pro-army groups, control of information and outright vilification.

United Nations High Commissioner for Human Rights, Mary Robinson, expressed concern in February 2001 at the living conditions of Burmese refugees in camps along the border in Thailand, both publicly and to the Thai Prime Minister Thaksin. Her comment follows last year's comments by Sadako Ogata (UNHCR) who condemned the camps as highly overcrowded and with poor sanitation.[8] Although Thaksin apparently acknowledged that the state of the camps "was a problem" and assured priority for human rights, there was no further discussion of the matter.[9]

Meanwhile, the Thai government has stepped up its program of repatriating undocumented migrants from Burma, regardless of the fact that almost all will be vulnerable to various human rights violations. Many so-called "migrants" are *de facto* refugees who have fled military aggression in Burma. Also in this group are those who fled forced labour and starvation, the result of military policies and practices.

Religious intolerance

Massive discrimination is suffered by the Rohingya, mostly due to their Muslim faith. 2001 saw anti-Muslim rioting in parts of Arakan,

304

Shan and Karen states, causing deaths and the burning of mosques and homes. This contributed considerably to the increasing numbers of IDPs and refugees.

In April 2001, the military authorities of Maungdaw Township, Arakan State, ordered 70 mosques and religious schools be destroyed whereas Buddhist pagodas and monasteries are being constructed at an accelerated rate.

It has been alleged that the anti-Muslim attacks have been orchestrated by the military as a means of diverting resentment. There have been reports that some of the "monks" involved in the religious violence were civilians directed by military commanders.[10] There are also reports that military intelligence has been publishing pamphlets to intensify anti-Muslim sentiment.[11] Post-September 11 anti-Muslim sentiment has been a gift to the regime, encouraging it to engage in further crackdowns against Rohingya activists. The regime was quick to link Rohingya groups to Al Qaeda.

Christians, mostly of Chin and Naga backgrounds, are also subjected to persecution and higher rates of human rights violations, such as forced labour. A US State Department report has highlighted the violent ban on Christian proselytising, restrictions on local publications of religious material, including the Bible and the extreme difficulties encountered in building new churches.[12]

Women

Violence against women continues to be perpetrated by the military, with women of the ethnic nationalities being their prime target. All non-Burman women live in constant fear of violence, and Rohingya women probably experience the worst abuses. Experience and fear of violence is a major push factor in female migration from Burma.

The military also has a policy of encouraging soldiers occupying ethnic areas to marry local women, especially those from influential families. This is considered a means of securing the ethnic nationalities' "loyalty" to the army. Forced marriage continues to be a trend. This occurs in situations of rape or sexual assault, where the offending soldier "redeems" the situation through marriage. This is often considered a lesser evil, as rape survivors are often beaten or fined if they make complaints of rape. Forced marriage also occurs when a soldier "falls in love" with a local girl and will not take no for an answer.

With such insecurity, it is no surprise that a significant number of ethnic nationality women are vulnerable to being trafficked into the

305

construction, hospitality, domestic and sex industries in neighbouring countries.

Despite the obstacles, a number of ethnic women's groups have been formed in recent years. The Women's League of Burma, an umbrella group of ethnic and pro-democracy women's groups, has begun to address issues affecting Burmese women at local and international levels.

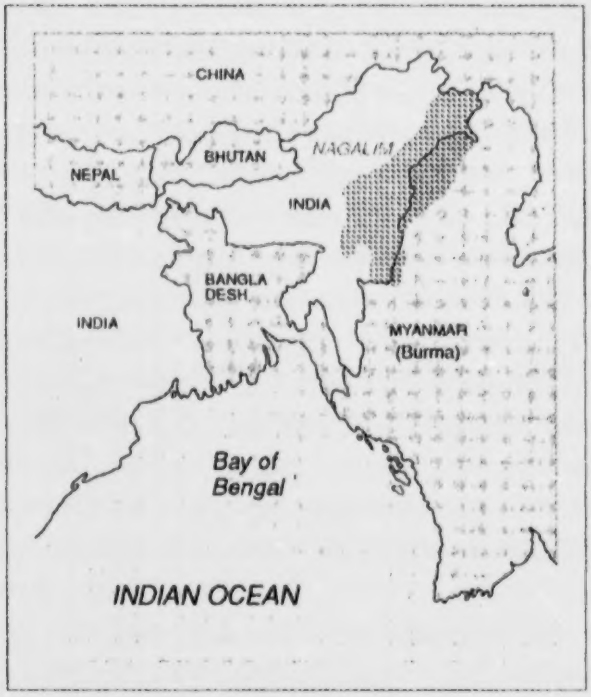
Notes

1 *Burman* refers to the ethnic group while *Burmese* refers to the citizens of Burma. (Editors note)
2 **Yawnghe, Harn. 2001.** "The Non-Burman Ethnic Peoples of Burma". Euro-Burma Office, 8 December 2001.
3 "One more Shan party official forced to resign". *Shan Herald Agency for News*, 18 September 2001.
4 See "Battle news from CNF". *CNF*, 18 May 2001.
5 This is contrary to statements made by the junta that improved roads and increased usage of mules have diminished forced labour.
6 "Official refugee population in Thailand tops 136,000". *BurmaNet*, 19 August. 2001.
7 The extremely arduous jungle life would be compounded at this time by the rains. ["Relief Team Reaches Nagas Burned out of Their Homes". *Burma Courier*, 7 June 2001.]
8 Thai officials defended the camps, saying conditions were analogous to those in nearby Thai villages.
9 *Reuters*, 28 February 2001.
10 "Inter-religious clashes spreading". *DVB*, 22 May 2001.
11 *ARNO*, 7 June 2001.
12 *Burma Courier*, 27 October 2001.

NAGALIM

The peace talks between the Government of India and the Nagas have been moving at a snail's pace. Their five-year long search for a peaceful solution to the protracted conflict has, on many occasions, encountered seemingly insurmountable problems. While such problems test the political strength and conviction of the parties, and the negoti-

306



ating skills of the direct participants, they also attract public attention to the issues. Apparently, both sides have gained invaluable experience and strengthened their commitment to the ongoing peace process.

The cease-fire

Midway through 2001, the National Socialist Council of Nagaland Isak-Miuvah (NSCN-IM) notified India that it would call off the cease-fire unless India immediately came forward with a public undertaking to uphold the original understanding that the cease-fire should apply to all the areas in which their forces had been engaged. This was served with two weeks notice. The Nagas continued to be outraged by the frequent attacks on members of their resistance movement, as well as their civilian population, by Indian armed forces under the local state governments of Manipur and Assam. For an entire week, the Indian media focused on this subject as the Prime Minister and the Home Minister held closed-door consultations with the Chief Ministers of the north-eastern states including Manipur and Assam, and military commanders and civil officers.

Following these hectic consultations, the Government of India sent its representative to sign the Bangkok Agreement of June 14, 2001 with the leader of NSCN-IM. The agreement declared that the government of India and the NSCN-IM would observe a cease-fire "without territorial limits", in other words, throughout the whole of the ancestral land of the Nagas still in their possession within India.

The signing of this agreement, it was believed, signified India's firm commitment to finding a negotiated settlement. However, some of the neighbouring communities in the region, particularly the two dominant Hindu communities, the Meiteis in Manipur and the Assamese in Assam, were not happy with the agreement. They feared that the geographical extension of the cease-fire signified a first step

BEST COPY AVAILABLE

towards dividing the existing states in order to create a larger *Nagaland* within a new political/administrative entity. Some responded violently. Meitei agitators in Imphal, the capital of Manipur, took to rioting and arson, and some of the Assamese leaders threatened to take to the streets. With the media fanning the fire, the situation threatened to snow-ball and cracks began to appear within the central government of India. Sensing the difficulties faced by the central government in handling the situation, NSCN-IM agreed to India's request for a re-wording of the Bangkok agreement. This provided the much-needed political space for the Indian government to proceed with the peace process.

Cease-fire violation

The peace process suffered another shock on March 16, 2002 when eleven NSCN-IM members were killed near Pallel market, a Naga town in Manipur, by troops of the 12th Indian Reserved Battalion. Some of their companions escaped. In retaliation, the Deputy Commissioner of the district was taken hostage by the United Kuki Liberation Front (UKLF), a NSCN-IM ally. The Deputy Commissioner's security escorts were disarmed and sent away.

It was later learned that the NSCN-IM had notified the Indian government that the UKLF and its cadres had detained the officer in order to ensure the immediate return of all the belongings of its fallen comrades, including their guns and ammunitions, and a thorough investigation of the incident and punishment of those involved in the cold-blooded murder. The Indian government made no military preparations to rescue the officer and, after two weeks, met the above mentioned conditions, after which the officer was released. It is suspected that anti-Naga sentiment on the part of radical Meiteis within the army was behind the killings. Allegedly, the 12th Indian Reserve Battalion is primarily made up of surrendered Meitei militants, and its commander is also said to be a Meitei.

India to form a "group of ministers" for the peace talks

Meetings of the peace negotiation teams and the Prime Minister of India with the Naga leaders during the past year resulted in significant progress in confidence building and furthering mutual respect. The talks have slowly begun to touch upon the substantive issues.

308

India's announcement on 19 February 2002 that it was planning to form a "group of ministers" to study the issues brought to the negotiating table is seen as a step in the right direction. The Indian government representatives' inability to sufficiently prepare themselves has been one of the main obstacles to progress in the negotiations. This decision, if implemented, may help to overcome this.

Reconciliation within Naga society

One of the most important developments under the present cease-fire is the process of reconciliation that Naga civil society organizations have been undertaking since the cessation of active military operations on their land. The reconciliation campaign is not only aimed at overcoming past bitterness among the Nagas and healing the wounds of war, it is also aimed at empowering each other to play a meaningful role in social reconstruction.

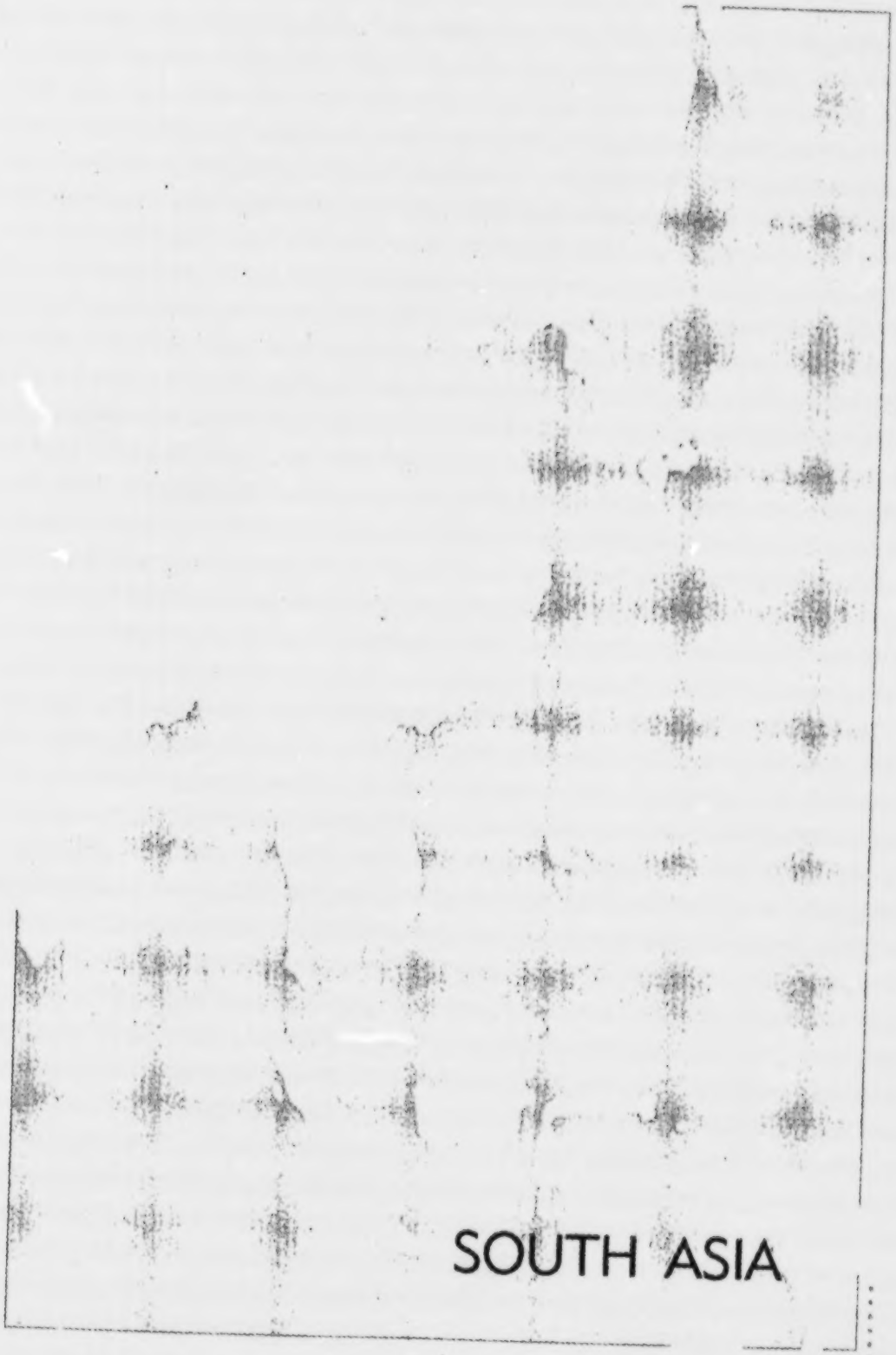
On 20 December 2001, Naga civil society organized a large ceremony to mark the launch of the "Process of National Reconciliation". Led by the Naga *Hoho* (the all-Naga council), and the Tribal *Hohos* (tribal councils), over ten thousand Nagas from all over their ancestral land in Assam, Manipur, Arunachal Pradesh and Nagaland in India, and from Burma, gathered in Kohima, the capital of Nagaland state on 20 December 2001.

This was followed by a meeting of 65 Naga representatives in Bangkok for 10 days of extensive consultation and brainstorming regarding the ongoing negotiations with India. Almost all the top leaders of the NSCN-IM, led by Chairman Isak Chishi Swu and General Secretary Thuingaleng Muivah, participated actively in the consultation with Naga civil society representatives. The consultation meeting was facilitated by the Asia Indigenous Peoples Pact (AIPP) with support from the International Work Group for Indigenous Affairs (IWGIA).

The success of the national consultation and reconciliation among the Nagas has undoubtedly had an impact on their neighbours and the Indian government. As a rule, Indian leaders and, for that matter, the Indian intelligentsia know very little about Nagalim and its people. What they think or do concerning the Nagas has been largely based on presumption. However, the recent mass movements for reconciliation and nation-building throughout Nagalim have begun to draw their attention.

Those among the Meiteis of Manipur and the Assamese communities who are opposed to the unification of the Nagas are watching

with concern. The violent events of June 2001 in Imphal, Manipur have to be understood in this context. Fortunately, others do not share their feelings. The Kukis, for example, have reached friendly understandings with the Nagas. Many other representatives of indigenous peoples in the region, including the Mizos, Hmars, Beites, Khashis and Jaintias,.the Boroks, Bodos, Daflas, Akas and others, have warmly commended Naga civil society for the maturity with which it has handled this difficult situation.



BEST COPY AVAILABLE

311

BANGLADESH

Year 2001 saw no improvement of the situation of the indigenous peoples in Bangladesh. The new government is obviously neither willing to recognise the country's indigenous peoples and their rights, nor to address the ongoing human rights violations or to implement the Peace Accord forged by the previous government with the leaders of the indigenous resistance movement in the Chittagong Hill Tracts in 1997. This chapter presents a summary report on some of last year's most important development in the Chittagong Hill Tracts (CHT), and in the Khasi and Garo areas of Northern Bangladesh.

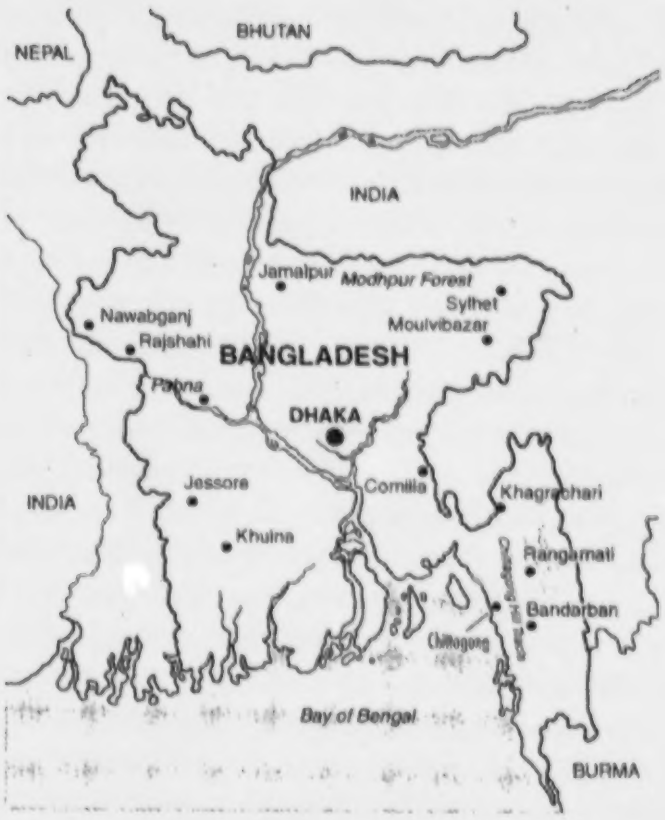
The Chittagong Hill Tracts

The peace process

In December 1997, after more than twenty years of violence, and intense and protracted negotiations, the Government of Bangladesh (GOB) and the *Parbattya Chattagram Jana Samhati Samiti* (PCJSS-United Peoples Party of the CHT), the driving force behind the armed indigenous struggle, agreed a Peace Accord. The 1997 Accord includes elements of indigenous self-rule within the institutional framework of a separate ministry, a regional council, district councils and the traditional indigenous authorities of the rajas.

However, the Regional Council, which is to be the main coordinating and advisory body for the CHT, has not been provided with the sufficient authority or resources to function effectively and, of the 22 subjects to be transferred to the Hill District Councils, only three have so far been placed under their supervision: primary education, social welfare and health. Implementation of the Accord has been painfully slow to the point of tardiness and neglect and, nearly four and a half years on, the situation is once again tense with sporadic incidents of violence amidst the continuing presence of the army and the settlers, both of which remain firmly entrenched in the CHT.

Although the Peace Accord is accepted by most of the Jummas as being a necessary step forward, it has not been universally welcomed. A dissident faction of the students' movement formed the United Peoples Democratic Front (UPDF) in 1998 because they believe the Peace Accord falls short of the Jummas' demands for self-determination. Although both the JSS and the UPDF strongly uphold the right



Demonstration against the Eco-Park on Garo and Khasi ancestral lands.
Photo: Sanjeeb Drong

BEST COPY AVAILABLE

to self-determination for the indigenous Jummas (short terms vis-à-vis long term goals), their difference in approach has escalated into armed hostilities, with both sides targeting members of the other party for retaliatory attacks. In the deteriorating situation, on 16 February 2001, three members (one British and two Danish nationals) of a Danish-funded road project in the CHT were abducted and held to ransom. They were later released.[1] Despite various efforts taken by indigenous leaders and elders to resolve the internecine conflict, it has emerged as a critical issue in the peace process.

Political developments

The JSS-UPDF dispute provides an opportunity for outside interests to be involved in CHT affairs, a legacy of the British colonial practice of "divide and rule". It has been encouraged, if not supported, by mainstream political parties who wish to undermine the peace process on the grounds that it favours the indigenous peoples. However, this has to be seen within the context of the long-running rivalry between the two main political parties in Bangladesh, the Awami League and the Bangladesh National Party.

In October 2001, in the general elections held in Bangladesh, an alliance led by the Bangladesh Nationalist Party (BNP) came to power with an absolute majority. The present government is led by Begum Khaleda Zia (she was previously Prime Minister from 1991-96). The 1997 Peace Accord is the outcome of negotiations initiated during her term in office, and concluded by her successor, Sheikh Hasina Wajed. The elections in the CHT were a contentious affair and boycotted by the JSS. Their main objection was to the elections being held on the basis of a new voter list prepared in May-June 2000. This voter list included settlers, businessmen, the armed and para-military forces and other non-indigenous persons who are not "permanently resident" in the CHT, while excluding the internally displaced and repatriated refugees among the Jummas:

> *The Accord also provided that only "permanent residents" of the Chittagong Hill Tracts would be allowed to vote. According to Shantu Larma [JSS leader Jyotirindra Bodhipriyo Larma], approximately 700,000 indigenous people and 100,000 Bengalis are "permanent residents". He claims that approximately 500,000 persons, whose names are on the voter list, are non-permanent residents, including 100,000 government employees and security personnel, and that these persons should not be permitted to vote in the region.*[2]

314

Despite JSS' demands to annul the 2000 voter list and prepare a fresh one, the elections went ahead in the CHT. There were a number of candidates for the three seats in the CHT, including from the UPDF, the BNP and Awami League. The candidates elected from the three CHT districts were as follows: two indigenous members - Moni Swapan Dewan from Rangamati (BNP-Alliance) and Bir Bahadur from Bandarban (Awami League); and one non-indigenous – Abdul Owadud Bhuiya (BNP-Alliance). However, neither of the indigenous members of parliament was appointed to head the CHT Affairs Ministry created under the Accord and the Prime Minister retains the CHT portfolio under her direct supervision; an indication of the continuing importance and sensitivity of the region.

During the peace negotiations, the BNP was outspoken in its criticism of the then-Awami League government's agreeing the Accord. During the run-up to the elections, it declared it would restore peace to the CHT by ensuring peaceful coexistence between the indigenous and non-indigenous people.[3] Post-election, in December 2001, at a meeting with the JSS to discuss the implementation of the Accord, the Minister for Law, Justice and Parliamentary Affairs informed them of the government's decision to review the Peace Accord. This would be done to ensure that the Accord was in accordance with Bangladeshi sovereignty and the national constitution. Within the context of earlier declarations by the BNP that the Accord favours the indigenous peoples and does not adequately protect the rights of the plains settlers in the CHT, this is a cause for great concern for the indigenous peoples despite assurances from the government that it will "uphold the culture tradition and life-style of the [indigenous] people."[4] The situation remains uncertain.

Land and forests

The central issue in the CHT relates to land and resource rights. In this context, the following developments are relevant:

One of the first tools used by successive governments to take over the lands of the Jummas was to devise a *forest* policy to create protected and reserve forests i.e. government forests from the existing natural forests in the CHT. This ensures the indigenous peoples are constrained (protected) and prohibited from (reserve) the use, management and access to the forest, its lands or resources and to do so is to contravene the forest law and face imprisonment and/or fine. Begun by the British in 1860, the pattern of land and forest management has essentially remained state-centric and "colonialist" with

one main difference: during the British period, in-migration to the CHT was strictly controlled and non-residents were not allowed to acquire land in the CHT.[5]

This policy continues and recently, in 1992, the Ministry of Environment and Forests (MOEF) issued a series of gazetted notifications to create more reserved forests in the CHT - for re-forestation and environmental protection. The total area was 220,000 acres; between 1996-98 approximately half this area had been declared as reserve forest and the impact on the indigenous peoples is severe as this includes small farmers' registered holdings, homesteads, farmlands in the process of registration, and forest and grazing commons held in accordance with customary law.[6] The indigenous peoples' Committee for the Protection of Forest and Land Rights in the CHT has been lobbying the government and has met with the new Minister of Environment and Forests in 2001 to request revocation of the notifications and redress but, despite assurances to do so, nothing substantial has been achieved so far. A recent amendment to the forest laws – the Forest (Amendment) Act of 2000 – indicates the government will continue its regulatory and policing approach towards forest management.

A major issue in the CHT is that of the *land allocated/occupied by the settlers*:

> *A few thousand acres of reserve forest containing both mixed and hilly lands were released for settlement, but these lands hardly amounted to one-tenth of what was required for the settlement (May 1984). The rest were settled by evicting the Paharis [indigenous peoples] from their traditional lands by grossly violating their traditional rights and affecting their lifestyles. The Government's claim that Bengalis have been settled on Government land (Khas land) is subject to differential interpretations. What the Government regards as Khas land is essentially the traditional jhum–land and forestland used by the Paharis [indigenous peoples] for agriculture.*[7]

This issue has not been resolved, and is the cause of tension and conflict in the CHT. As a result of the settlement programme and militarization, with the army occupying lands for military purposes, many indigenous peoples are *internally displaced*. Some of them have been displaced twice as many are among those displaced by the Kaptai dam, and they face much economic hardship since, being mainly agriculturalists, they are dependent on their land for their survival.

An additional element is the plight of Jummas who returned to the CHT from refugee camps in India on the basis of two rehabilitation-

repatriation agreements with the government (1992 and 1997). However, many of their lands are currently occupied by settler families who refuse to return it to the legal owners. The returnee *refugees* are not provided with any food rations or other benefits, in contrast to the settler families, and this difference in treatment and approach has exacerbated already existing tensions. A Task Force was created to supervise and manage the rehabilitation of the internally displaced and the refugees. However, the previous head of the Task Force took the controversial decision to include the settlers among the internally displaced, overriding the objections of other members of the Task Force. The new BNP-led government has yet to appoint the leader of the Task Force and it remains to be seen whether and how the new head of the task force will resolve this contentious issue.

The Hill District Councils are to have main responsibility for land administration under the Accord. However, land and resource rights have not been transferred to the HDCs and continue under the authority of the civil administration. The deputy commissioners, who are the principal civil administration officers in the CHT, continue to allocate and transfer lands to non-indigenous persons in direct contravention of the Accord.

The Accord also provides for the establishment of a *Land Commission* to adjudicate land claims in the CHT in accordance with "local laws, usages and practices". It is to be headed by a retired judge of the High Court and its members are to include the three traditional rulers/rajas, the chairperson of the regional council and the hill district councils. A new commissioner was appointed in November 2001 – Justice (Rtd.) AM Mahmudur Rahman and a head office was established in Khagrachari (regional offices are to be established in Bandarban and Rangamati).

However, there are divergences between the Accord and the enabling legislation – the CHT Land Dispute Settlement Act of 2001. The Regional Council has rejected the Act on the basis of 19 reservations including: (i) the arbitrary powers of the chairperson: his decision is to be final in the event of lack of consensus among the other members; (ii) the exclusion of Jumma refugees who returned to the CHT under the 1992 repatriation agreement from the ambit of the Land Commission's work; (iii) the exclusion of the internally displaced Jummas from the scope of the Act; and (iv) that the other members of the Land commission have not yet been formally designated. The Act (as adopted) is perceived as facilitating legalisation of the settlers' occupation of indigenous peoples' lands. However, the Commission is, as yet, in its early stages and it remains to be seen how it will resolve the land question in the CHT in a just and objective manner.

317

Military

The armed forces remain in the CHT and are intensifying their presence. The government contends that the army presence is necessary to maintain law and order in the CHT, although this is in direct contravention of the Peace Accord, which stipulates the removal of all temporary and para-military camps from the CHT with the exception of the six permanent military cantonments and the border security force (Article 17 (d)). As of March 2002, out of a total of 520 camps in the CHT, an estimated 31 have been dismantled. In addition, the armed forces continue to exert control in civil matters e.g. indigenous students require a no-objection-certificate from the army for admission to universities and other institutions of higher education. During the conflict, from the mid-1970s to 1997, there were persistent reports of human rights violations committed by the armed forces against the indigenous peoples, often in collusion with the settlers. These included mass killings, arson, looting and rape. In its 2001 annual report, Amnesty International refers to the human rights violations that occurred in the CHT, and points out that the government has not brought those responsible to justice.

Reports of violent incidents involving the armed forces, in collusion with the settlers, continue to be made. This has included an attack on Jumma refugee villages in Dighinala on 18 May 2001 when houses were set on fire and looted; the military operation of 22 May 2001 in Barachandra village in Matiranga to search for "terrorists", which resulted in the harassment of and attacks on the villagers, including the brutal rape of three women who had to be hospitalised as a result; and the arson attack on Jumma villages in Ramgarh on 25 June 2001 when a number of indigenous peoples were killed and many fled to India for shelter. The UN Committee on the Elimination of Racial Discrimination, when examining the report of the Government of Bangladesh, expressed its concern at the reports of human rights violations by the security forces present in the CHT, including reports of arbitrary arrests, detention and ill-treatment. It recommended that the government implement effective measures to guarantee that all Bangladeshis, without distinction as to race, colour, descent or national or ethnic origin, should be protected against violence and bodily harm (CERD/C/304/Add.118).

As an indication of their future presence in the CHT, the military authorities have acquired some 65,793 acres of land in the Bandarban and Rangamati districts for artillery and air force training centres, camps and cantonments. They remain firmly entrenched in the CHT.

3186

Religious discrimination

The issue of religious discrimination and its influence on the (slow) implementation of the Peace Accord was raised by the UN special rapporteur on the elimination of all forms of religious intolerance in his August 2000 report, following a visit to the CHT.

The BNP is currently in power with support from a coalition of political parties, including the Jamat-e-Islami and the Islami Oikya Jote, both of which are fundamentalist Islamist parties. These two parties, and others, are taking an increasingly active interest in the CHT and are engaged in building mosques, madrassahs (religious Islamist schools) and providing assistance to the settlers to more firmly consolidate their presence in the CHT. By one count, there are more than 300 mosques and madrassahs in Khagrachari District alone, funded by national and international Islamist NGOs such as the Bangladesh Islamic Foundation and the Al Rabeta organization.[8] Needless to say, this is a cause for great concern among the indigenous peoples who view this development as yet another element in their colonisation and domination by the majority population. This has to be analysed within the context of the 1974-97 conflict period, when many temples were burned down, monks beaten and killed, and many Jummas, in particular women and girls, forced to convert to Islam – in the latter case often following rape and other acts of violence. In addition, Jumma place names are being replaced by Bengali-Muslim-oriented names. The activities of the Islamist parties continue unhampered.

The indigenous movement

There are a number of indigenous organizations working in the CHT. However, their efforts are hampered by the requirement for registration from the NGO bureau. This has functioned as an obstacle to indigenous organizations seeking foreign assistance in carrying out their activities, as NGO bureau certification is a pre-requisite to accessing foreign funding. In direct contrast, despite objections from the indigenous peoples and demands for greater supervision, national NGOs such as the Bangladesh Rural Advancement Committee (BRAC), non-religious and Islamist organizations operate. The indigenous organizations believe this is a discriminatory practice aimed at curtailing their activities.

Indigenous organizations in the CHT have formed the Hill Tracts NGO Forum, which operates as a coordinating organization. At national level, the Jummas have established links with other indigenous peoples in Bangladesh. On 31 March 2001, in solidarity with the other indigenous peoples in Bangladesh, the Indigenous Peoples' Rights

319

Forum (Bangladesh Adivasi Forum) was established at the initiative of the JSS leader and Regional Council Chairman, Mr. Shantu Larma. Each year, the indigenous peoples of Bangladesh celebrate 9 August as International Day of the World's Indigenous Peoples and this has come to be recognized as an annual event. It has also helped to draw public attention to the situation of the indigenous peoples in Bangladesh and the government, under Prime Minister Hasina, has recognized the indigenous peoples as such. The indigenous Jummas are also active at regional and international level, including within the UN and at related events, and have forged links with indigenous peoples in other parts of the world.

Killing of Garo woman in Modhupur forest

The Garo indigenous communities of Modhupur forest now have to fear for their life. For a long time, they have been facing severe threats from the majority Bengali people who want to evict them from their ancestral homeland in order to get hold of their land. In their latest attack, on March 20, 2001, Gidita Rema, a young Garo mother, was stabbed to death by the Bengali settlers, Habibur Rahman, Mofij Uddin and Juran Ali. Villagers said Gidita lost her life because she had always protested against cruel acts by Bengalis in their village. It seems the killing is related to the rescue of Nomreta Rema, a 15-year-old Garo girl who had been abducted, raped, forced to convert to Islam and marry local Bengali settler, Mofij Uddin. The girl had been rescued by Gidita's family. On 18 March, local union parishad chairman,[9] Zakir Hossain, called for a meeting to deal with the case. In the meeting, the chairman himself forced Gidita to return Nomreta to Mofij. When Gidita refused to do so, the chairman told her angrily that her house would be burnt and that she would be killed if she did not obey his order. Two days later, Gidita Rema was murdered.

The police have not arrested the murderers. Local Garo leader, Anthony Mangsang, has protested in front of the police station and Gidita's father said that the police had obviously even helped the killer, Habibur, to escape.

Eco-Park project inaugurated in spite of protests

In July 2000, the Bangladesh Government announced plans to establish an Eco-Park in Moulvibazar district, which will develop more

320

than 1,500 acres of the Khasi and Garo people's ancestral land for tourism. The plan was developed without any participation from, nor the consent of, the communities affected. Seven villages, comprising over 1,000 Khasi and Garo families, face forced eviction from their homelands. The indigenous peoples of Bangladesh started a democratic movement against this Eco-Park. Many intellectuals, university professors, writers, journalists, politicians, cultural activists and other members of civil society have supported them and have participated in their programmes. They have organised protest rallies, public gatherings and press conferences, they have published leaflets and held a hunger strike against the government's plan, and they have received excellent press and media coverage. Despite these protests, the Environment and Forest Minister inaugurated the Eco-Park on 15 April 2001. At the same time, thousands of indigenous people showed the Minister the "black flag" as a symbol of their protest. The day was Easter Sunday, a key religious day for the Khasi and Garo people. However, they spent that day on a protest rally in the forest. On 5 May 2001, indigenous people again organised a mass public gathering in Dhaka to halt the plan to establish an Eco-Park. Thousands of people attended. Many intellectuals, writers, poet, artists, professors and journalists attended the meeting and made speeches in favour of the indigenous communities' demand.

Notes and references

1 It is unclear who, or which party, was responsible for this act, although there are allegations that the UPDF was responsible.
2 US Department of State. March 2002. *Country Reports on Human Rights Practices-2001: Bangladesh.*
3 *Daily Star,* 13 August 2001. *"BNP to Restore Peace in CHT if Elected, says Khaleda".* Internet news.
4 *The New Nation,* 12 December 2001.
5 **Raja Devasish Roy. 2002.** "Land and Forest Rights in the Chittagong Hill Tracts, Bangladesh." Paper presented at ICIMOD, Nepal, February 2002.
6 Ibid.: 14.
7 **Mohd. Rafi and A. Mushtaque R. Chowdhury (eds.). 2001.** *Counting the Hills: Assessing Development in Chittagong Hill Tracts,* Dhaka.
8 International Jumma Community: *An Appeal to the Honourable Representatives of Donor Countries' and Funding Agencies' Meeting in the Bangladesh Aid Consortium, 13-15 March, 2002, Paris.* p. 9.
9 Council of the Union, a government administrative unit.

321

NEPAL

More than 4,000 people including insurgents, security forces, police and ordinary civilians have been killed during the fighting between the security forces and the Maoist guerrilla since the Nepal Communist Party (Maoist) launched its "people's war" to establish a New Republican Democratic State in mid-February 1996. The most affected areas and peoples in the armed conflicts are the indigenous peoples and their territories.

State of emergency and worsening human rights situation

The indigenous peoples are increasingly facing threats to their life and property in their territories. Human rights violations such as rape, indiscriminate killing, kidnapping, torture and disappearances are common. Indigenous activists have been killed, and an estimated 600,000 of the country's youth have fled the country over the last few months. Unofficial estimates say the toll on infrastructure since November 2001 alone may total more than 2 billion Rupees (about 27 million US Dollars). Almost every sector of national life has been adversely affected.

The Movement for the Protection of Democratic Rights, Nepal, with the help of human rights organisations and civil society, has mediated peace talks between the government and the Maoists. The Maoists had presented three demands: a "republican state", an "interim government" and the "election of a constituent assembly". However, none of their demands gained a positive response from the government or the political parties in parliament, even after the demand for a "republican state" was dropped. The peace talks failed after the third round and, in November, the Maoists unilaterally pulled out of the four-month-long "peace talks" and resumed the violence. For the first time in the six years of their insurgency, they were targeting government installations and army barracks. The government declared a state of emergency and suspended all civil, political and human rights in late November, branding the Maoists terrorists and mobilising the Royal Nepalese Army to contain and destroy the rebellion.

For the last four months, the Royal Nepalese Army and Maoist guerrillas have come face to face in the Nepalese hills and southern plains. While the army has been stepping up pressure against the insurgents through its "cordon-and-search-and-destroy" operations,

322

the rebels have managed to inflict heavy damage on the security forces.

The loss of human life, property and infrastructure in the course of the Maoist "people's war" has been enormous. Not a single day passes without reports of brutal killings, ordinary citizens, including children, falling victim. What surprised many was the ferocity of the rebel attacks, despite the three-month-old state of emergency and security operations. In the aftermath of the heaviest attack so far, in the far-western district of Achham on February 16 2002, in which over 150 members of the forces were killed, parliament - with far more than the mandatory two-thirds majority - decided to extend the state of emergency by another three months (until June 2002) to allow the army a free hand in fighting the insurgency.

Officials maintain that there are no immediate chances of a resumption in talks with the rebels. The government would consider holding talks with the Maoists only if they denounced terrorism, handed over all the arms and ammunition looted from the security forces, complied with the Constitution of the Kingdom of Nepal and joined the national mainstream. The Maoists declare that they are ready for peace talks if the government announces the election of a Constituent Assembly to draft a new constitution. Recently, the Government of Nepal publicly offered a reward of 5 million Nepalese Rupees for capture of the leaders of the Nepal Communist Party (Maoist) dead or alive, although the death penalty has been illegal and unconstitutional in Nepal since 1991.

BEST COPY AVAILABLE

Bill on the establishment of a "National Foundation" passed

At its 20th Session, in 2001, the Parliament of Nepal passed a bill on the establishment of a "National Foundation for the Development of Indigenous Nationalities". The bill was supposed to have been passed at its 1999 session. This act is very important since it is the first Nepalese act that recognizes 59 ethnic groups as indigenous nationalities. Previously, the Cabinet's decision was the only legal recognition of indigenous peoples in Nepal. The act has the following features:

1. It recognises 59 ethnic groups of Nepal as indigenous nationalilties.
2. The Foundation is an autonomous body.
3. The main objective of the Foundation is the overall development of indigenous nationalities through plans and programmes related to the economic, social, educational, cultural (language, script, history, arts, literature, knowledge) and technological development of indigenous nationalities.
4. The Foundation will have a Governing Council under the chairmanship of the Prime Minister. It is the supreme policy-making body, and consists of the representatives of all indigenous nationalities as ex-officio members. The Minister of Local Development will co-chair it and it will consist of a further six indigenous parliamentary members from the House of Representatives, three indigenous parliamentarh members from the National Assembly of the Parliament, and a member of the National Planning Commission. Secretaries of the Ministries of Local Development, Finance, Culture, Education and Tourism will be ex-officio members.
5. The Foundation will have an Executive Committee consisting of the Vice Chairman, two members, one ex-officio member from the Ministry of Local Deveopment and a Member/Secretary. It is the implementing body for the decisions taken by the Governing Council of the Foundation. The Executive Committee will be formed on the recommendation of a three-member committee, including two representatives of indigenous nationalities. The Ministry of Local Development will be the focal ministry for the Foundation.
6. Every indigenous nationality has the right to be represented at the Governing Council.[1]

324

Language Bill registered in Parliament

Nepal is a multilingual country. There are almost 70 communities with 125 different languages. The constitution of Nepal recognises the languages spoken by the different communities of Nepal as national languages. However, on June 1 1999, the Supreme Court issued a certiorari against the decision to use local languages as additional official languages by Kathmandu Metropolitan City, Dhanusha District Development Committee and Rajbiraj Municipality. This decision of the Supreme Court posed a challenge to, and questioned the status of, the constitutional recognition of national languages. In March 2000, the First National Conference on Linguistic Rights therefore declared that "no language is either small or great, all are equal, and all the language communities have equal rights". The conference also refused to accept the decision of the Supreme Court and demanded amendments to the Constitution of the Kingdom of Nepal related to language discrimination (see *The Indigenous World 1999-2000* and *2000-2001).*

In this context, two indigenous organizations, Nepal Tamang Ghedung (NTG) and Newa Rastriya Andolan (NRA) began to prepare a draft "Language Bill" with the help of a "Language Bill Drafting Committee" made up of senior lawyers. On 16 October 2001, the "Language Bill" was introduced into the House of Representatives by several Members of Parliament - Mr. Narayan Man Bijucche of the Nepal Labour and Peasant Party, Mr. Lila Mani Pokharel of the Joint People's Front of Nepal, Mr. Pari Thapa of the National People's Front, Mr. Buddhi Man Tamang of the Rastriya Prajantantra Party and Mr. Bir Bahadur Lama of the Nepal Communist Party (United Marxist and Leninist). With the support of IWGIA, NTG and NRA also organised consultation meetings of lawyers, language activists, human rights activists and indigenous activists in order to finalise the draft bill, and a separate consultation for Members of Parliament on the bill presented to the House of Representatives during the 21st session of Parliament. This bill will execute the fundamental rights guaranteed by Article 18(1) of the Constitution of the Kingdom of Nepal in accordance with the spirit of Article 26(2) of the state directive on principles and policies of part 4 of the same.

The Language Communities observed a "Black Day" all over the country on 1 June 2001 to show their disagreement with the decision of the Supreme Court on language issues, given two years earlier. The Black Day was organised by various language communities and a nationwide mass demonstration, posters and pamplets, processions and mass meetings were organized. The language communities de-

325

cided to continue the Black Day until the government changed the rules and regulations of the country.

Indigenous peoples propose constitutional amendments

The Nepalese people and the political parties are now in favour of constitutional changes or amendments. In this regard, indigenous people's organisations submitted a proposal for amendments, changes and additional provisions to the present constitution to the Prime Minister and the parliamentary politcal parties. According to the constitution of Nepal, a two-thirds majority of Parliament has to vote to amend the constitution. The indigenous proposals are as follows:

Recommendations for amendments to the present constitution

1. Preamble: The preamble should reflect the fact that all ethnic groups, languages, arts and cultures shall have equal rights.
2. Article 2: The "nation" should be replaced by "multinational state".
3. Article 4 (1): The state should be declared secular.
4. Article 6 (1 and 2): All the languages of Nepal should be declared "national languages".
5. Article 46: The name of the present Upper House of Parliament, should be changed from "National Assembly" to "Assembly of Nationalities", in which all the nations (peoples) that make up Nepal should be represented. This is in order to secure the full participation of all communities, large or small, in the law-making processes. This could be a strong instrument with which to strengthen the national unity of the country.
6. Article 9 (1 and 5): "Mother" should be added to"father" in article 9 (1). In article 9 (5), a foreigner who marries a Nepali woman has the right to Nepali citizenship.
7. Article 9 (4a): A foreigner can acquire citizenship of Nepal if s/he can speak and write any national language of Nepal.
8. Article 11 (3): "The state shall not discriminate against citizens on the grounds of language" should be added in the article.
9. Article 12 (2): The restrictive statement sub-clauses 1, 3 and 4, which states "castes, tribes or communities" should be omitted.
10. Article 18 (2): The State should provide education in the mother tongue up to higher education level.
11. Article 19: All religions that have long been practised must be recognized or none of them should be.

326

12. Article 26 (10): Laws should be formulated within the spirit of the guiding principle of the constitution.
13. Article 112 and 113: There should be a provision that ethnic or community groups can form political parties. (Or the prohibition or imposition of restrictions on political organizations or parties on the basis of religion, community, caste, tribe or region should be deleted from the articles).
14. Article 114: Women's representation in political parties for the elections to the House of Representatives should increase to 15 percent from 5 percent of the total candidates, 50 percent of which should be reserved for indigenous women.

Recommendations for additional provisions

15. Quotas to be guaranteed for nationalities/indigenous peoples and Dalit (lower caste and untouchables) communities at the level of decision-making in government, employment, education and health sectors.
16. Fifty percent of the seats should be reserved for women of nationalities from the quota that has been reserved for women at the level of decision-making in government, employment, education and health sectors.
17. The state should guarantee the direct participation of nationalities in the preservation and promotion of indigenous knowledge and intellectual and cultural heritage, in order to respect their intellectual property right over such heritage.
18. Existing practices of separating electoral areas for elections to the House of Representatives according to population distribution should be abolished and new areas fixed according to the socio-cultural set-up, historical background, geographical location, ethnic groups, concentration-residential arrangements and population distribution.

Reference

1 *Nepal Gazette* Part 51 Additional Issue 67 on 7 Feb. 2002.

327

INDIA

The year 2001 was marked by two major developments at national level that could have serious consequences for India's indigenous peoples and their organizations in the future: the attempts by politicians and private business to nullify the landmark Supreme Court judgment on the Samata case by demanding a review, or by lobbying for an amendment to the 5th Schedule of the Constitution; and the promulgation of the controversial Prevention of Terrorism Ordinance (POTO), which was eventually passed as the Prevention of Terrorism Act (POTA) on March 26, 2002.

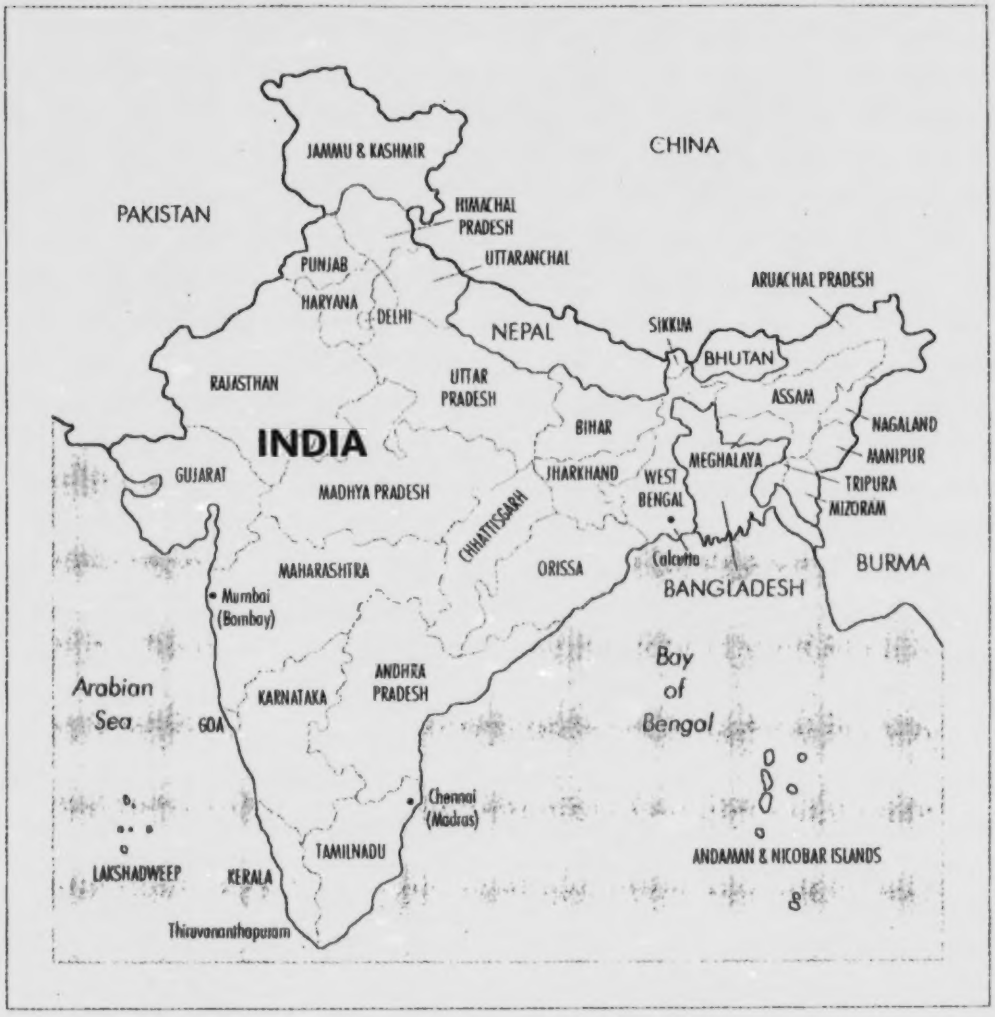
While some encouraging developments have been reported from the regions – like the successful struggle of the Adivasi[1] in Kerala for the restoration of alienated land (which, due to its significance, will be reported in detail below) – others do not offer much reason for enthusiasm. The implementation of the Panchayat Raj Extension Act, which is supposed to guarantee a far-reaching degree of self-rule for indigenous communities in the 5th Schedule areas, has so far been a disappointment and the North-east, in spite of some progress in the peace talks between the Nagas and the Indian government, remains one of the most heavily militarized areas in the world.

The aftermath of the Samata case: ongoing attempts to amend the Fifth Schedule

Samata is an NGO working with the Adivasis of Andhra Pradesh. Samata filed a case against the state government of Andhra Pradesh for leasing out tribal lands to private mining companies in the Scheduled Areas (officially recognized and registered tribal areas under the so-called 5th Schedule of the Constitution). In July 1997, the Supreme Court of India issued an historic judgement in which it declared that the Government was also a "person" and that all lands leased to private mining companies in the scheduled areas were null and void. The judgment, among others, further provides for:

- The possibility of "minerals to be exploited by tribals themselves either individually or through cooperative societies with financial assistance of the State".
- That at least 20% of net profits from mining operations in tribal areas "be set aside as permanent fund for development needs apart from reforestation and maintenance of ecology".

328



- That the "transfer of land in Scheduled Area by way of lease to non-tribals, corporation aggregates, etc. stands prohibited".
- That the "renewal of lease is fresh grant of lease and, therefore, any transfer stands prohibited".
- That a "Conference of all Chief Ministers, Ministers holding the Ministry concerned and Prime Minister, and Central Ministers concerned, should take a policy decision for a consistent scheme throughout the country in respect of tribal lands".

Since the issuing of the Supreme Court judgment, both the State Government of Andhra Pradesh and the Central Government have attempted to reverse it. A joint petition of the Andhra Pradesh State and the Central Government for modification of the Samata order was, however, dismissed by the Supreme Court on March 6, 2000. In July

BEST COPY AVAILABLE

of the same year, the Ministry of Mines drafted and circulated a Secret Note to the committee of Secretaries proposing an amendment to the Fifth Schedule in order to overcome the Samata Judgement so as to make the leasing of land to outsiders in tribal areas possible. This lead to massive popular protests in Andhra Pradesh and extensive critical coverage in the national and regional media. Ultimately, the Chief Minister of Andhra Pradesh reacted by issuing a statement in which he indicated the withdrawal of the proposed amendment and, on March 15, the Prime Minister replied to a question from Arjun Singh in the Upper House of the Parliament that the Government had no intention of amending the Fifth Schedule to overcome the Samata Judgement. The battle, however, is not yet over. In a Draft Approach Paper to the Tenth Five Year Plan (2002 - 2007) issued by the National Planning Commission on May 1 last year, the Samata Judgement was referred to as a hurdle to private coal mining. Paragraph 3.58 of chapter 3 on Sectoral Policy Issues states:

> *It will also be necessary to make other amendments to overcome the hurdle placed in the way of private mining in notified tribal areas by the Samatha [sic] Judgement. The procedures for environmental clearance also need to be greatly simplified so that potential private investors face clear and transparent rules.*

And ten days later, Mr. Arun Shourie, Minister for Disinvestment, made a statement in the Hindu Business Line, Delhi Office, to the effect that they wanted to review the Samata Judgement. Obviously, many forces in central government still refuse to accept the Supreme Court Judgment.

Passing of new anti-terrorism act watched with concern

In spite of massive national and international criticism, the controversial Prevention of Terrorism Act (POTA) was passed on March 26 this year. Drawn up soon after the September 11 incident in New York, the bill was hotly debated in public for months. Human rights groups and activists in India have pointed at the severe consequences this law has for political, indigenous, religious or human rights activists. As the international human rights organization, Human Rights Watch, had already warned in October last year, the new anti-terrorism legislation would give the Indian police sweeping powers of arrest and detention.[2]

The POTA is a modified version of the Terrorist and Disruptive Activities (Prevention) Act (TADA), repealed in 1995 due to public protest and known for having facilitated tens of thousands of politically motivated detentions, torture and other human rights violations against political opponents, indigenous and minority rights activists in the late 1980s and early 1990s. The new anti-terrorism law is said to go even further by providing a much broader definition of what is considered to be a "terrorist act". It allows for up to 180 days of preventive detention without charge, and it "subverts the cardinal principle of the criminal justice system - the presumption of innocence - by putting the burden of proof on the accused, withholding the identity of witnesses, making confessions made to police officers admissible as evidence, and giving the public prosecutor the power to deny bail. Moreover, little discretion is given to judges regarding the severity of sentences".[3] Opponents of the new law share the fears that "POTA is more likely to be used for preventive detention of peaceful dissenters than for tackling terrorism"[4] and are of the same opinion as India's National Human Rights Commission, which is convinced that already existing laws were sufficient to fight the threat of terrorism.

Jharkhand: petitions submitted against the recently passed Panchayat Raj Extension Act

In 1996, the 73rd Constitutional Amendment Act, which is directed primarily at promoting village level democracy through the *Panchayat Raj* institutions, was extended to the Fifth Schedule Areas through the Provision of the Panchayats (Extension to Scheduled Areas) Act. The extension of this Act has been carried out with suitable changes in order to transform a system established for the general areas of the country into one that is appropriate for the specific socio-economic ands politico-administrative systems among the Adivasis in the Scheduled Areas. It should ensure self-governance through a three-tier structure. The first tier is the *Gram Sabha*. This is an institution of self-governance at the village level. All the adult members of the village are automatically members of the Gram Sabha. In the areas not officially recognized as tribal areas (or so-called Scheduled Areas), the lowest level of the local self-rule system is the *Gram Panchyat*. This differs from tribal areas in that it is constituted by members elected by villagers. The other two structures are the same for tribal and non-tribal areas: the second higher body is called the *Panchyat Samiti*, which is constituted in the area demarcated as the Development Blocks and

consists of members elected by its lower tier, i.e., Gram Sabhas or the Gram Panchyats respectively. The *Zila Parishad* (District Council) is the highest body at the district level, which is constituted by the members elected by the lower tiers. Through the Extension Act for tribal areas, the Gram Sabha has been vested control over land, rights over minor forest products and minor minerals, control of markets, money lending, sale and consumption of intoxicants etc. It also provides for central government development funds to be sent via the Zila Parishad directly to the Gram Sabha.

The states with areas falling under the Fifth Schedule were required to make appropriate amendments to their laws in line with the provisions of the central act. Nine states are covered by the Fifth Schedule and therefore mandated to amend their laws accordingly: Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa, Chattisgarh and Rajasthan. However, only five of them – Andhra Pradesh, Himachal Maharashtra, Madhya Pradesh, Orissa and Jharkhand - have so far carried out the necessary amendments. The Adivasi and their supporters are, however, not at all satisfied with the way this was done. The case of Jharkhand, where the respective act was passed only last year, illustrates how, in the process, the spirit of the Central Act was corrupted to such an extent that it became a tool in the hands of the state government to strengthen its control of the Adivasi communities instead of providing for their empowerment through local self-rule.

Neither the original 73rd Amendment of the Panchyati Raj nor the Panchyats Extension Act of 1996 have handed over the basic right of full control over land, forest, mineral and water resources to the communities. Nor has control over police, administrative and judicial functioning been vested in the Panchayats. The government of Jharkhand has even gone a step further in weakening local self-governance by curtailing whatever little was there in the Central Act. The objective of the Jharkhand Panchyat Act 2001 appears to be the formation of powerless institutions at the village level in the name of "Panchyats", to secure cooperation with the government in the implementation of its projects and programmes.

There is no provision for the obligation to seek consent, not even consultation, with the Gram Sabha or Gram Panchayat in cases where the state or the central government requires land in the Scheduled Areas. Similarly, while the Central Act of 1996 provides the power to the Gram Sabha and Gram Panchyat to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe, the Jharkhand State

332

Act remains silent about this. It is suspected that this has been done to safeguard the vested interests of industrial entrepreneurs and agro-business.

In the case of ownership rights over minor forest products, too, the government's policy of protecting the vested interests of the forest contractors is quite apparent. The Jharkhand Act does not pass responsibility for the protection and management of forests to the Gram Sabha, as the Adivasi had hoped, but deprives it even of the ownership right to minor forest products as opposed to the provisions of the Central Act. Nor does the Jharkhand Act endow the Gram Sabha with the power to enforce prohibition or regulate or restrict the sale and consumption of any intoxicant, or the power to exercise control over money lending.

The most vicious step the Jharkhand Act has taken to defeat the very promise of giving autonomy to the tribal people is in the area of the functioning of the core institutions of tribal self-rule, the Gram Sabha, Panchyat Samity and Zila Parishad. First of all, the Jharkhand Panchyat Raj Act mixes up the two institutions of the Gram Sabha and the Gram Panchyat in the Scheduled Areas. Undermining the importance of the former, it constitutes the latter (an institution that should be in place only in non-Scheduled Areas) through elections where places will be reserved not only for the Scheduled Tribes but also for Scheduled Castes and Other Backward Castes, on the basis of the size of their population in the village. Furthermore, to weaken the structures of these institutions, the Jharkhand Act gives the state the right to nominate distinguished persons at all levels of the three-tier structure without mentioning the criteria for selecting such persons. A provision has been made to make the local Member of Parliament, Member of Legislative Assembly and the Member of *Rajya Sabha* (Upper House of Parliament) ex-officio members of these supposedly democratically elected bodies. Moreover, in their absence their nominees can represent them in these bodies. These are not only undemocratic, but violate the Constitution of India.

Consequently, four petitions were filed to, and admitted by, the Jharkhand High Court challenging the validity of holding Panchyat elections in the Scheduled Areas. In February 2002, a petition was filed by Mr. Devendra Nath Champia on behalf of Jharkhandi's Organization for Human Rights (*Chaibasa*) and *Munda Manki Samiti* of Kolhan challenging the validity and constitutionality of the Jharkhand State Panchayati Raj Act. This petition has also been admitted by the Jharkhand High Court. However, the government was ill prepared to argue the case and it could not even produce an English translation of the Act in court. The High Court has given it three

weeks, ending in June 2002, to come prepared to the next hearing. In the meantime, some prominent members of the Uraon (Kurux) community are going to intervene on behalf of the community in the case.[5]

Jharkhand government's new industrial policy foresees encroachment on Adivasi land

The new industrial policy presented by the Jharkhand government in 2001 revealed the intention to create economic zones. One such zone would be along the 125 km long national highway 33 between Ranchi and Jamshedpur. It is proposed that 5 km on either side of the highway be earmarked for industrial purposes. That would amount to a 1,250 sq km area intended for industrialization. And no regard is given to whether it is agricultural land or forestland or not. Furthermore, no consultation has been undertaken with the numerous Adivasi families that occupy much land on both sides of the road. Indigenous peoples' consent is obviously not a criteria.

On October 20, the Director of Industries, Mr. A. K. Singh, made a more sweeping statement. Addressing the members of the Bokaro Chambers of Commerce and Industries, he said that the Jharkhand government had decided to reserve eight kilometres of land on both sides of national and state highways for industrial purposes. This has sweeping consequences because of the considerable length of state and national highways in the state. The forest department, it seems, is either keeping quiet or not being consulted. Again, the hundreds of thousands of families that will be affected have definitely not been consulted. Welfare Minister of Jharkhand, Mr. Arjun Munda, disclosed on December 26 that the government of Jharkhand is considering legislation to make owners of land on which any industry is set up capital partners in the company. Currently, the practise is such that landowners are given financial compensation and, in some cases, jobs after which they have little role to play. He said that if the landowners were made capital partners then they would be entitled to a share of the profits and would get back the land, once the company moved out.

Madhya Pradesh: killings in an attempt to undermine Adivasi movement?

A fact-finding mission conducted to investigate the killing of three Adivasi and a non-Adivasi on April 2, 2001, in Dewas district, Ma-

dhya Pradesh (see *The Indigenous World 2000-2001*), came to the conclusion that the act was part of a systematic effort to undermine the local Adivasi organizations, the *Adivasi Morcha Sangathan* and *Adivasi Shakti Sangathan*. The fact-finding team, which entered the area shortly after the event, found that since March 28 the police and administration in Dewas had unleashed a reign of terror causing thousands of Adivasis to flee their villages for the forests, while the police administration ransacked their villages, destroyed houses and arrested some of them.

During the mission, the team was told by the affected people that the true reasons for the reign of terror was the intention to destroy the tribal organizations *(sanghatan)* by branding them as Naxalites.[6] In 1996, the tribals in this region had formed the two above mentioned local organizations in order to resist exploitation by the forest department, corrupt government machinery and usurious moneylenders. These organizations had attracted hundreds of Adivasis and were gaining political influence such that, in the recently held local government elections, Sangathan members were very successful. This created a great deal of political tension and the traditional parties were unhappy with the Sangathans. Both the District Collector and the Superintendent of Police, who were new to the area, had publicly announced on February 13 that they were going to totally destroy the Sangathans and leave no trace of them.

Furthermore, the Forest Department had traditionally, and illegally, made enormous profits by imposing levies on house building, collection of timber, grazing of animals etc. Over the past three years, the Sangathans had protested against these illegal practices and told the tribals not to pay these bribes. The officials of the Forest Department and the other District officials were furious as they found themselves being deprived of a lucrative source of income. In response, the government formed an organization named Van Raksha Samiti as an alternative to the Sangathan and was forcing tribals to join, but without much success. Curiously, all the houses that were destroyed by the security forces belonged to leaders of the Sangathan while no member of the Van Raksha Samiti was affected.[7]

Kerala: the struggle of Adivasis enters a critical phase and goes beyond land rights

The death of 38 Adivasi men, women and children in the districts of Wayanad, Palakkad and Kannur in July-August 2001 precipitated an

335

intense struggle. This time, the struggle was led by the *Adivasi-Dalit Samara Samithy*, an informal platform. What is also significant was that the Dalit[8] activists have joined the Adivasi activists, led by their popular leader Ms. C. K. Janu.

Kerala state, with a Physical Quality of Living Index (PQLI) that is comparable only to Taiwan, South Korea and Japan in the Asian region, last year found itself faced with a situation whereby thousands of Adivasis were facing hunger, starvation and imminent death. The government blamed a mysterious illness, alcohol and polluted water. Deaths from hunger were nothing new. But the scale of deaths during the period indicated the looming disaster. On 14 August, a vehicle of the government civil supplies carrying grain was waylaid in Noolpuzha Panchayat in Wayanad District and the food grain distributed amongst the hungry. Four Adivasi women, including two under-age girls, were arrested. The Adivasi-Dalit Samara Samithy decided to launch a struggle, describing the emerging situation as one that had made Adivasis refugees in their own homeland. Land, the fundamental source of survival, has been systematically denied them despite specific legislation such as the Kerala (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975, which was not implemented despite a High Court order of 1993 (see *The Indigenous World 1995-96* and following issues). There was an effort to repeal and replace the 1975 Act in 1999, which however was struck down by the High Court as unconstitutional in 2000. The new bill also talks of providing land of up to one acre each for 11,000 landless families. The case currently rests with the Supreme Court (see *The Indigenous World 2000-2001).* All this is fundamentally to avoid restoration of alienated lands and instead provide some alternative lands, in violation of the provisions of Article 244 (1).

Protest camps and negotiations

On August 30, Adivasi refugee camps were set up in front of the residence of the Chief Minister A.K Antony and the Secretariat at Thiruvananthapuram, the state capital. Hundreds of Adivasis, mostly women and children from different parts of the state poured in, set up huts and began to reside there stating that there was no question of returning without a final solution to the fundamental issue of their survival. The state ignored the struggle, initially assuming that it would not last long. However, the struggle gathered momentum and support from the general public, with various sections coming out in support, making it into an issue of democracy itself. The Dalits, mostly

336

the slum dwellers and the poor, actively began participating in the struggle. The cabinet discussed the issue and declared their intention to talk to the Adivasi-Dalit Samara Samithy on September 6. On September 5, the state-sponsored grand gala celebrations and rally to celebrate *Onam*, an important festival and now a huge tourism event, was seen as improper and vulgar when hundreds were dying of hunger in the state. The Samara Samithy declared that they would oppose it, which led to skirmishes and attempts to arrest C. K. Janu. This struck a popular chord amongst the public. The next day, having agreed that a crisis existed, the Chief Minister held talks and came up with a proposal that was, however, rejected by the Samara Samithy. The talks thus failed, with the Samara Samithy declaring they would intensify the struggle.

After a meeting with the District Collectors on September 11, the Chief Minister announced that as much as 15,000 acres would now be identified from various categories of land viz. Plantation Corporation, tribal development projects, *poramboke* (government lands) etc. within one month, and within the next two months they would be distributed to the landless. The Samara Samithy rejected this offer as well. The struggle began to spread throughout the state. A statewide "Journey for the Assertion of Rights" took place from September 12-17 with public receptions, meetings and rallies all along the route. Support and pressure from more sections were added in the form of rallies and other actions by human rights groups, Dalits, women's organizations, fish workers' organizations, eco-groups, intellectuals, writers, academics, students, administrators, media etc. The number of Adivasis in the refugee camps increased to over 500 as more and more huts were set up.

Unsuccessful attempt to break the struggle

The government then decided to break the struggle by adopting a multi-pronged strategy of threats, inducements and inside subversion and by dividing the Adivasis with the aid of mainstream political parties and the state machinery. These measures were effectively countered and, instead, only consolidated the unity of Adivasis. The Samara Samithy called for the first meeting of *Adivasi Gothra Mahasabha* (Grand Council of Adivasis) on October 3 – taking the first tentative step towards a people's assembly. The Mahasabha approved the actions of the Samara Samithy and called for an intensification and spread of the struggle to all the Adivasi areas. The day also saw a rally of over 10,000 people in the city. The attempts from some civil society organi-

zations to file cases to dismantle the refugee camps failed. The plan to forcibly remove the refugee camps failed, too, as the general public in the city and the media began a vigil, besides forming a protective chain around the refugee camps. The condemnation of a government that would crush the democratic right to peaceful assembly and democratic protest was forthright. The Chief Minister announced that 42,000 acres of land would be identified and distributed to those possessing less than an acre. The Adivasis also rejected this offer. Gowriamma, the Minister for Agriculture, began informally mediating between the Samithy and the government. A situation had emerged in which the government and the mainstream political parties were forced to accept that a crisis existed. Refugee camps spread to other districts such as Pathanamthitta, Idukki, Palakkad and Kannur. Massive police force was deployed and arrests began. Agitation spread throughout the Adivasi belt creating the mobilization for a general uprising, the first such experience in the state. C. K. Janu announced a hunger strike to the death from October 17 after the second assembly of the Adivasi Gothra Mahasabha approved further plans for the struggle.

The final agreement

Faced with a crisis, the government decided to concede to all the demands of the Samara Samithy on October 16. In turn, the Samithy offered to dismantle the refugee camps while continuing the process of struggle. The agreement reached at the final round of discussion held between the sub-committee especially constituted by the government to resolve the uprising, headed by Chief Minister A. K. Antony, some of his colleagues and the top bureaucracy on October 16, and the Adivasi-Dalit Samara Samithy represented by C. K. Janu, Geethanandan, Sunny, Prasad, M. K. Narayanan and C. R. Bijoy includes the following provisions:

1. Five acres of land to all Adivasi families with less than 1 acre. To begin with, 42,000 acres of land of plots between 1-5 acres would be distributed while the rest would be distributed as and when lands were located and made available. This work would begin from January1 to December 31, 2002 giving 5 acres where possible as and when suitable lands are found.
2. A master plan would be drawn up before December 2001, to be included in the 10th five-year plan beginning in 2002 in which the focus would be to support the above beneficiaries for a maximum of 5 years until they reach self-sufficiency.

3. A cabinet decision would include Adivasi areas in the Fifth Schedule and a proposal would be made that would be sent to the centre for further notification by the President. Meanwhile, suitable legislation would be issued to protect the land allotted under this agreement.
4. The Kerala government would abide by the Supreme Court judgment in relation to the case pending. In this case, the Kerala government had challenged the High Court judgment, which struck down the Kerala government's earlier repeal of the Kerala Scheduled Tribes Act 1975 and declared contempt of court for not having implemented the High Court judgment of 1993 to implement the 1975 Act.
5. Participation of the Samara Samithy in all decision-making and implementation processes on all matters related to this agreement.
6. A Tribal Mission would be constituted to carry out all the above, headed by a senior officer of the Indian Administrative Service.

The third meeting of the Adivasi Gothra Mahasabha was held at the Adivasi hamlet Pazhayarikandam in Idukki District on November 17-18. The basic structure of the Mahasabha as a non-centralised system based on the fundamental principles of the Adivasi politico-administrative system was worked out and affirmed as the peoples' system of governance not only to fulfill the agreement reached with the government but also to govern the people. This extra-parliamentary system was seen as essential in a context in which the mainstream political parties and the state are not willing or able to fulfill even the mandatory constitutional obligations. To begin with, it was resolved that the task of identification of beneficiaries and lands approved at the fundamental unit – the village – was to be carried out statewide. The government symbolically distributed over 1000 acres of land to about 383 Adivasi families in Idukki District, commencing the distribution of lands. The process of identification of beneficiaries and lands has faced stiff opposition from mainstream political parties, the bureaucracy and particularly the forest department. The Samara Samithy and Gothra Mahasabha, realizing that the struggle will be a long drawn out one, are launching a statewide process of political awakening and reform focusing on all marginalized sectors. Their position is that it is the people who should not only implement the agreement but also set in motion a political agenda and a movement for change.

339

Tamilnadu: the struggle against Coimbatore Zoological Park continues

In 2001, a new attempt was made to fence in the 400-acre proposed site of the Coimbatore Zoological Park (CZP) on Adivasi land in Anaikatti Hills in Coimbatore by an NGO bearing the same name. CZP hopes to take over the ancestral territory of the Irulas, who are classified by the government as "primitive tribals", affecting the lives and livelihoods of over 1,000 of them, by engineering conflict between Adivasis and the government as well as with the local non-Adivasis petty traders and contractors.

CZP is a registered society set up by leading industrialists and business men of Coimbatore City in 1986, headed by G. Rangaswamy (Managing Director, Chandra Textiles), and which proposes to establish the reportedly 2.5 billion Rupee (US$ 53 million) "Coimbatore Zoological Park and Conservation Centre" at Thuvaipathy Village about 30 km from Coimbatore city.

In 1991, the CZP began their operation to grab land using strong-arm tactics and employing gangs to terrorize the people. A number of houses were illegally demolished. Organized protest by Irulas began in 1994 itself. With the granting of a lease over 180.78 acres of land in 1998 and the actual handing over in 2001, the current conflict arose. On March 30, the Adivasis were attacked. Six Adivasis and three CZP henchmen were injured. Twenty people, including six women, were arrested the next day while they were attempting to admit the injured to hospital.

Massive police force was brought in and, under their protection, the fencing commenced on April 9. An Anti-CZP Joint Action Committee was formed with 14 organizations including Adivasi organizations, environmental groups, trade unions etc. who commenced a hunger strike. A fact-finding mission was carried out by the All India Coordinating Forum of the Adivasi/Indigenous Peoples (AICFAIP) from April 30 to May 1. Protests were organized in various parts of the state which, for the first time, saw the issue of land coming to the forefront. A boycott of the assembly elections was called for. The arrested Adivasis were released after over a month in prison but threats by CZP continued. Meanwhile, a joint front of Adivasi activists, including the Adivasi-Dalit Samara Samithy of Kerala under the leadership of C. K. Janu, was formed to intensify the struggle. In the last week of May, the demolition of the fence now stretching over a vast area once again commenced. The Irula re-entered the lands and commenced cultivation. On June 12, another 16 Adivasis including

340

six women were arrested for this. Subsequent to the change of government and changes in the bureaucracy, the officials promised action. The CZP was asked to cease all provocation, as the land itself was disputed land. With the rains, the people slowly returned to the lands and commenced cultivation. For the time being, the status quo rules once more. The struggle itself has brought to the fore the lack of any protective legislation for Adivasis in Tamilnadu. The Central Zoo Authority of the Ministry of Environment and Forests meanwhile confirmed in November that CZP had not been granted permission to set up the zoological park on the said land.

The North-East region

The 250,000 sq km North-East region of the Indian Union, which is tenuously linked to the rest of the country by a corridor less than 22 km wide, is an area of extreme cultural diversity. More than 300 communities in the region are officially recognized as "Scheduled Tribes" in the Indian records of peoples. They are scattered across the seven states of the region, namely Arunachal Pradesh, Assam, Manipur, Mizoram, Nagaland and Tripura. Each tribe has its constellation of sub tribes or clans speaking various dialects, which may run into the hundreds. There are tribes emerging within tribes in the process of discovering themselves as an independent entity in various parts of the region causing upheaval in the north-eastern political set-up. One important characteristic of the region is the existence of ethnic groups that spread across state and international borders into Bangladesh, Burma or China. The region is also home to a large population of non-tribals who have migrated here from other parts of India and from across the porous international border with Bangladesh, which has led to anti-foreigner movements erupting every now and then. The criss-cross of inter- and intra-group relationships, along with the government and other structures at the state, centre and global levels define the parameters of the situation in the region.

Militarization, homelands politics and ethnic armies

The North-East region is one of the most heavily militarized regions in the world. There is the presence of the Indian army and paramilitary forces, along with the various state police organizations. Their task is to defend the territorial integrity of the Indian nation against external forces, and against those forces considered to be insurgents.

Any assessment of the regional situation has to take into consideration India's security concerns, particularly in the backdrop of past events such as the Chinese invasion of India in 1962, and the lurking fear that this could happen again given that it has not withdrawn its claims to large parts of the Indian state of Arunachal Pradesh. In April 2001, the sudden "invasion" of Pyrdiwah town in Meghalaya, right on the Bangladesh border, by the Bangladesh Rifles brought to the fore the vulnerability of micro-communities to macro political happenings between nation states.

Of as much concern in the present historical context is the growing militarization of north-eastern societies and communities as the struggle for "homelands" has spawned a large number of well-organized armed wings of ethnic organizations created to carry forward the "cause of the tribe". The causes range from carving out independent countries, like that of the two factions of the National Socialist Council of Nagalim (NSCN), the United Liberation Front of Asom (ULFA) in Assam, the National Democratic Front of Bodoland (NDFB), the Peoples Liberation Army (PLA) and the United National Liberation Front (UNLF) in Manipur, etc. to demands for a state (e.g. Bodoland Liberation Tigers) to a district council (the Bru National Liberation Front), or the fight against demographic marginalisation in Tripura, such as by the National Liberation Front of Tripura (NLFT) or the Tripura Tribal Force etc.

It is believed that many of these ethnic "armies" have come about in a kind of domino effect, as a self-defense response in an atmosphere of increasingly militant inter- tribal politics. Such a domino effect has resulted in armed organizations mushrooming across the region. Local newspapers report daily on clashes between these various groups and the government security forces, or among the armed organizations themselves.

There are more than three dozen such armed groups, which jealously guard their own turf, the stronger and better organized ones imposing taxes within their areas of influence in order to enforce their authority. The imposition of tax is one of the most frequent causes of inter-tribal feuds. For example, in 2001 the imposition of house taxes on Khasi and Jaintia[9] households in the border areas of Assam by the United Peoples Democratic Solidarity (UPDS) and Karbi National Volunteers, and the Achik National Volunteers Council in the West Khasi hills areas caused such a reaction that a local pressure group, the Federation of Khasi Jaintia and Garo People (FKJGP) called for the creation of a volunteer force to fight against these forces. Another example of such taxation causing strife surfaced during March 2002

342

between the Nyshis and the Bodos in villages on the Assam-Arunachal Pradesh border.

According to the annual Union of India Home Ministry Report, there was a total of 1,338 incidents during the year 2001 in the north-east, in which 574 activists of various armed organizations, 176 Indian security personnel and 600 civilians lost their lives. The number of injured and maimed, and the voids left in families due to these, go unaccounted. Battles between armed groups, factional feuds within armed groups of the same community, assassinations and unexplained and secret killings left the region awash in a spiral of bloodshed and violence. According to international bodies studying displacement, there are between 170,000 to 250,000 displaced persons in the region fleeing various ethnic cleansing processes, fears of communal reprisals, persecution and harassment by the army and armed groups etc.

Inter-ethnic conflicts

The year 2001 was a watershed in the turbulent history of post-1947 north-east India. The region came face to face with the grim possibility of multiple large-scale clashes breaking out over the territorial claims of the various communities.

The most significant was the face off between the Nagas and the Meiteis in Manipur over the issue of the territorial extension of the ceasefire between the government of India and the National Socialist Council of Nagalim (Isak-Muivah faction; NSCN-IM). The agreement reached between the government of India and the NSCN-IM in June 2001 extended the ceasefire to all the other states where Nagas live. It coincided with the publication of a map depicting the geographical area of the NSCN-IM's claim for Nagalim, comprising all the territories that they thought "belonged" to the Nagas. This created uproar in neighboring states, fearing that this would eventually undermine their territorial integrity. The government of India had to withdraw the territorial extension of the ceasefire making it applicable only within the state of Nagaland (see also chapter on Nagalim in this volume). During the tense weeks before the withdrawal, it was only the sagacity of the communities' leaders that averted bloody clashes. But the issue remains unresolved, as hostilities are only suspended for the moment.

In Assam, the decision of the government of India and the Assam government to create a Bodoland Territorial Council (BTC) for the Bodos divided the communities living within the areas to be declared under the BTC into those who felt that the BTC would end up sup-

343

pressing their rights and those who aligned themselves with the Bodos. The Bodos, who have been campaigning for a "Bodoland", are also divided over the issue with the major armed groups, the Bodo Liberation Tigers (BLT) in favour, and the National Democratic Front of Bodoland (NDFB) against it, since the latter claim to fight for total independence. In the atmosphere of mistrust, people fear that violent clashes may break out.

It has become clearer than ever that the future of the small communities of the region depends on whether these multiple ethnic claims can be addressed and resolved to the satisfaction of all sides. Quite a tough task indeed!

Another important lesson for the people of the north-east that emerged from these experiences is that any resolution of an ethnically-linked issue does not lie with the government of India but with the neighbouring tribes and communities. The prolonged politics of competing homelands based on ethnicity and a notion of self-determination that has fuelled a cycle of conflicting claims backed by military means - which seems to be the favoured method for attaining these objectives - has reached saturation point. A stage has been reached when it has started feeding on itself. The situation has squeezed into oblivion any democratic space for dialogue or expression on the part of the very people in whose name these organizations carry guns. In such circumstances today, there is very little room for free and frank expression of opinion.

Reconciliation among the Nagas

The Naga peace process is crucial for the people of the north-east region as a whole and the process entered a crucial phase this year (see also chapter on Nagalim in this volume). Its importance for the region lies in the belief that most of the other armed organizations in the various states of the region draw their sustenance in the form of training, arms and logistical support from the Naga armed organizations, particularly the National Socialist Council of Nagalim, which successfully sought to, and did, create a broad coalition of ethnic communities in an anti-Indian "colonial" sentiment.

In 2001, due to the cease-fire, Naga civil society seemed for the first time in the 50 year struggle to have gained some control over the violent factionalism among the Nagas and managed to get an all-round agreement that violent methods were to be renounced. In unprecedented acts, the Naga elders - through the *Hoho* and various organizations - issued stern warnings to warring Naga fac-

tions when fratricidal killings during the year threatened to derail the painfully built up reconciliation among the Nagas. But killings and violent attacks are continuing despite their appeals.

In a major breakthrough for the process of building up inter-community understanding, after the June 2001 ceasefire imbroglio, Naga civil society has also started dialogue and interaction with the neighboring tribes and people in recognition of their legitimate interests and apprehensions. However, although this process is continuing in other parts of the region, there are no attempts on either side to bridge the deep rift between the Nagas and the Meiteis. This is crucial for the future of the region.

Growing religious divide

Over the last year, the politicization of religion became a major factor in the ethnic-community equation in the north-east, bringing a totally new dimension to the already vitiated atmosphere. "Indigenous culture of the state is under threat and people are being forcibly converted," said the Chief Minister of Arunachal Pradesh at one cultural meeting calling for resistance against the Christian and Hindu religions. In Tripura, a body called the Uttar Purva Bharat Janjati Dharma Samskirti Suraksha Manch was formed to protect the indigenous religion against Christianisation. Indigenous belief systems, which had been discouraged by the Christian missions, have become a handy tool for the peddlers of militant Hindu nationalism such as the Rashtrya Swayamsevak Sangh (RSS) and the Vishwa Hindu Parishad (VHP) in their campaign, just as Christianity has become a subtle instrument for some of the armed ethnic organizations to spread their influence across the region.

National Commission for Review of the Working of the Constitution

The government of India set up the National Commission for Review of the Working of the Constitution (NCRWC), the recommendations of which were submitted by former Supreme Court Chief Justice MN Venkatachaliah on April 2, 2002. With regard to the north-east, it made several recommendations to widen the self-governing systems of the Sixth Schedule of the Constitution. However, it has failed to satisfy the aspirations of several of the communities' representatives who had sought radical changes in the structure. The documents have been made public to start the process of debate and dialogue.

345

Notes and references

1 The indigenous peoples of mainland India are usually called Adivasi, meaning "original people". The indigenous peoples of India's north-eastern region are not called, nor do they refer to themselves as, Adivasi. They prefer the term indigenous or tribal people.

2 *Human Rights Watch World Report*, http://www.hrw.org/wr2k2/asia6.html

3 *Human Rights Features Quarterly*, January-February 2002: POTO: Govt decides to play judge and jury. http://www.hrdc.net/sahrdc/hrfquarterly/Jan_march_2002/poto.htm

4 Ibid.

5 The section on the passing of the Panchayat Extension Act in Jharkhand is partially based on the article by Samar Bosu Mullick "Nationalist Ideology and Tribal Self-rule in Jharkhand". Mimeo n.d. The author has further provided an update on the most recent developments.

6 Maoist guerrilla, named after the Naxalbari region in the North of West-Bengal where the Maoist guerrilla movement started in the 1960s.

7 *India Together*: http://www.indiatogether.org/stories/dewas.htm

8 Oppressed castes, often referred to as "untouchables". They are not considered indigenous peoples.

9 The Khasi and Jaintia are two indigenous ethnic groups that are fairly large and dominant in Meghalaya state but minorities in the adjacent districts across the state border in Assam.

NORTH AND WEST AFRICA

BEST COPY AVAILABLE

347

THE SITUATION OF THE AMAZIGH PEOPLE

In North Africa, and particularly in Morocco and Algeria, the year 2001 was characterized by an escalation of repression against the Amazigh Movement in general, stamping down peaceful demonstrations in Algeria and banning meetings in Morocco, and it was characterized by a new decline in the governments' policy towards freedoms and basic rights.

The governments of Libya, Egypt, Tunisia and Mauritania continued to deny the Amazigh people their cultural identity, and continued an extensive Arabization policy, while the Amazigh Movement continued its claim for the right of self-determination in the Canary Islands.

However, positive events also occurred during the year. In Algeria, a constitutional amendment has recognized the Amazigh language as a national language. Similarly, the king of Morocco recognized the Amazigh dimension to Moroccan identity and enacted a Royal Decree to found the Royal Institute for the Amazigh Culture.

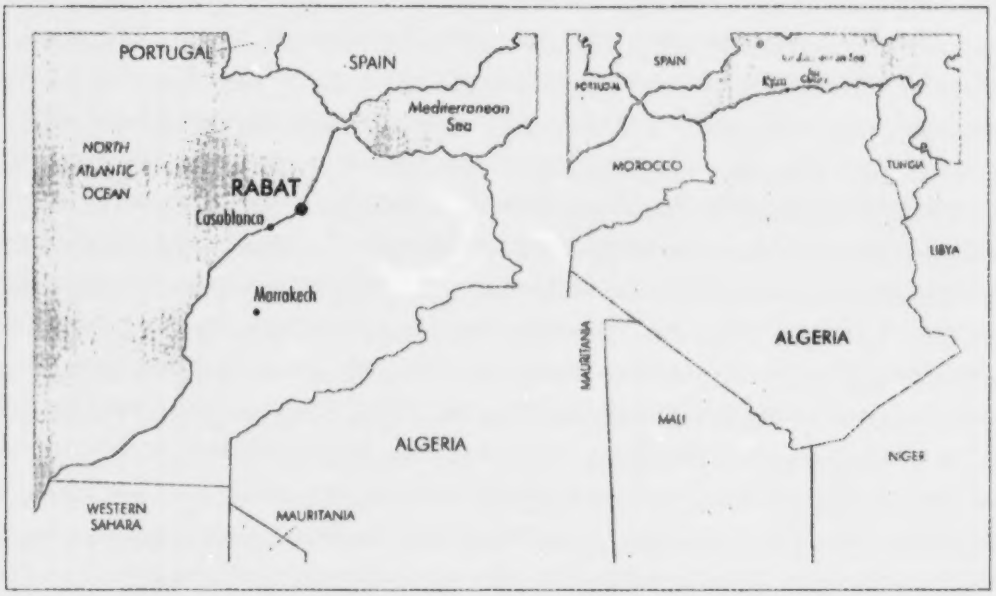
Policies in North Africa and the struggle of the Amazigh Movement

The governments of North Africa, particularly in Algeria and Morocco, are continuing the privatization policy in accordance with the recommendations of the World Bank. They are also drawing up reform bills or plans, especially in the fields of investment, justice and public freedoms, and most of these governments have initiated development programs for rural areas.

Although some governments, generally speaking, admit that the majority of people are Amazigh, they take cover behind the "integration" that has resulted from "Islam and Arabic" in order to hinder any change or progress. In the name of "national unity" and "nationalism", they curb freedoms and violate basic human rights and continue to promote integration, assimilation and an extensive policy of Arabization.

However, the Amazigh Cultural and Political Movement has escalated its struggle, particularly in Algeria and Morocco, in order to convince the governments of the futility of the current political integration policies.

348



Algeria

The uprising of the Amazigh people in Algeria in June 2001

The Amazigh people, under the yoke of oppression and exclusion in Algeria, has been obliged to reorganize itself by reviving its traditional organizations. Accordingly, peaceful demonstrations were organized in the Tizi Ouzou area and in some other neighbouring regions but the authority stamped out these demonstrations with violence, using arms against the peaceful Amazigh people and leading to the deaths of more than one hundred people and thousands of wounded.

These peaceful demonstrations took place unremittingly during the year 2001 and the beginning of the year 2002, which led the Algerian government to attempt to put an end to this movement by creating a so-called group of dialogue. The constitutional amendment that recognizes the Amazigh language as a national language should also be seen as a result of the massacres in the region of Kabylia. However, the Amazigh Movement rejected these manoeuvres and demanded the establishment of a federal system that would assist the Amazigh people in Kabylia to exercise a wider degree of self-determination. The Amazigh people continued to protest and to refuse to support the regime's policy, declaring a full boycott of the regime, its bodies and representatives, and of the elections.

BEST COPY AVAILABLE

Morroco

The Moroccan government, which underwent a cabinet reshuffle but has not actually changed in three years, with the exception of some ministers, the Minister of the Interior in particular, declared that it had drawn up a number of bills for submission to Parliament during the year 2001, among others, bills concerning the right to strike, political parties, the electoral code, medical cover, the Economic and Social Council, a children's code, the audio-visual mass media, the work code, and a reform of the Social Pact, all of which are to be reviewed during the year 2002.

The publication of the Agreement on the Abolition of Discrimination against Women

After the failure of the Moroccan government, during the year 2000, to implement its plan for integrating women on the basis of recommendations from the World Conference on Women in Beijing, it was decided to publish the Agreement on the Abolition of all Forms of Discrimination against Women on March 08, 2001. This followed the King's reception for a number of prominent figures belonging to the women's movement on 5 March and the creation of a committee to review the Civil Status Code. However, the Amazigh Women's Movement was excluded from participating in this committee.

Despite the importance of this event, the implementation of this agreement in Morocco is not possible. As the Moroccan government stated during ratification of this agreement, there have been some reservations concerning the very idea of equality between men and women, on the pretext that some of its articles are in contradiction with "Islam and the Koran".

The banning of the assembly of the Amazigh Political Movement

The year 2001 was the most active year at the level of national and international initiatives for the Amazigh Cultural Movement. This ultimately led to the banning of many of the Amazigh cultural associations' activities and to the unexpected banning of the right of the Amazigh Political Movement to assemble in Morocco after they had obtained an official and written authorization.

The Amazigh Statement Committee, which was created in 2000, decided to organize its largest meeting in June 2001 in order to discuss the political strategy of the Amazigh Cultural Movement. All meas-

ures were taken and the organizers obtained written authorizations for the meeting. However, armed police forces blocked all roads leading to the Bouznika Complex where the meeting was supposed to take place, preventing participants from meeting. The explanation given was that this meeting might cause a breach of the peace. As a consequence, the meeting had to be held in the house of one of the participants. It was decided to create regional committees that would take autonomous initiatives and organize meetings in order to broaden the capacity of the movement to put more pressure on the government.

Recognition of the Amazigh cultural identity

After the armed interdiction of the assembly of the Amazigh Political Movement in June 2001, King Mohammed VI declared, in the Throne Address on July 31, 2001, that he recognized the Amazigh cultural identity. After 45 years of independence, this was the first declaration of the multi-dimensional aspect of Moroccan identity and of the fact that the Amazigh dimension is one of its facets, alongside the Arabic, Islamic, African and Andalusian dimensions. In October 2001, the King declared the creation of the Royal Institute for the Amazigh Culture.

It is noteworthy that the Amazigh Cultural Movement focussed, on the rehabilitation of the Amazigh dimension of Moroccan identity, and the creation of an institute for Amazigh studies, in addition to other basic demands such as constitutional recognition of the Amazigh identity and adoption of the Amazigh language as an official language. Despite this recognition and the Royal decision, Amazigh children are still prevented from taking Amazigh names.

The deteriorating conditions of human rights activists

Human rights activists from the Moroccan Association of Human Rights were tried and prosecuted in May 2001 due to the peaceful demonstration organized on December 10, 2000. They were sentenced to three months imprisonment but an appeal acquitted them at the end of 2001.

Moreover, the newspaper *Demain* was unjustifiably banned from publication for several months and its editor, Mr. Ali Lmarabet, was prosecuted simply because he published information stating that one of the Royal palaces may be sold. He was sentenced to three months imprisonment but refused to submit his case to the Court of Appeals and declared that he was ready to go to prison.

351

The Amazigh Movement's international activities

The Amazigh Cultural and Political Movement has also endeavoured to put pressure on the North African governments through the United Nations Charter and through international and national conferences. The following are some of these major events.

The International Federation for Human Rights: symbolic support to the Amazigh Language

The World Conference of the International Federation for Human Rights, held in Casablanca during the second week of January 2001, was an opportunity for the Amazigh Cultural Movement, represented by the *Mrik* Association, to raise the Amazigh cause. The conference supported a call for respect of the right to cultural diversity and to rehabilitation of the Amazigh language in North Africa and the world. Despite the opposition of the president of the Moroccan Association for Human Rights, the aforesaid World Conference adopted a major decision of symbolic support for the Amazigh Cultural Movement in terms of increased condemnation of the official and unofficial attitudes that refuse to recognize the right of cultural diversity in Morocco.

The African Commission on Human and Peoples' Rights

The 29th ordinary Session of the African Commission on Human and Peoples' Rights, held in Libya in April-May 2001, was an opportunity to raise the Amazigh cause for the first time within this African body. This was done in cooperation with a number of representatives of African indigenous peoples and in cooperation with IWGIA. During this meeting, participants condemned the massacres perpetrated by the Algerian government against the peaceful demonstrations of the Amazigh people, calling for its rights and for the respect of its linguistic and cultural identity. It was an opportunity to highlight the cause of indigenous peoples in Africa in general and in North Africa in particular, and to call for the establishment of democratic regimes and policies allowing full participation in the cultural and political arena and recognizing the cultural identity of indigenous peoples.

The World Conference Against Racism

The Amazigh Cultural Movement participated, through the International Amazigh Congress, the Tigmi Association, the Solidaridad

352

Canaria Association and the Tamaynout Association together with the international movement of indigenous peoples, in the World Conference against Racism and Racial Discrimination held in Durban, South Africa in August/September 2001. This was a very important event because it adopted, despite all obstacles, the Durban Declaration, which declares the international community's recognition of indigenous peoples and their cultural identity and it also adopted an action plan in order to abolish all forms of discrimination in all political and cultural fields.

Concluding remarks

It clearly appears that things are moving very slowly and sometimes even regressing. Despite this difficult situation, the Amazigh peoples believe in the possibility of progress and victory over all forms of discrimination and violation against human rights and the rights of peoples.

THE SITUATION OF THE TUAREG PEOPLE IN NORTH AND WEST AFRICA

The Tuareg[1] are part of the indigenous Amazigh people (generally known as "Berbers") of North Africa.[2] Their traditional lands range over some 1.5 million sq. kms. of the Central Sahara and Sahel (see map) – an area roughly three times the size of France, their former colonising power. They now find themselves occupying large tracts[3] of southern Algeria, northern Mali and Niger, with smaller pockets in Libya, Burkina Faso and Mauritania. Their precise numbers are not known: national censuses either ignore ethnic categories (as in Algeria) or are of dubious accuracy (as in Niger and Mali). Published figures range from 300,000 to 3 million. The southern Tuareg of Niger and Mali probably number around one million and 675,000 respectively.[4] The northern Tuareg, who inhabit the regions of Ahaggar and Tassili-n-Ajjer in Algeria number some 25,000 (20,000 in Ahaggar; 5,000 in Ajjer).[5]

Although the Tuareg never comprised a single state or political entity, the national boundaries, drawn arbitrarily on a map in Paris, divide what was a single cultural and socio-economic entity. While

353

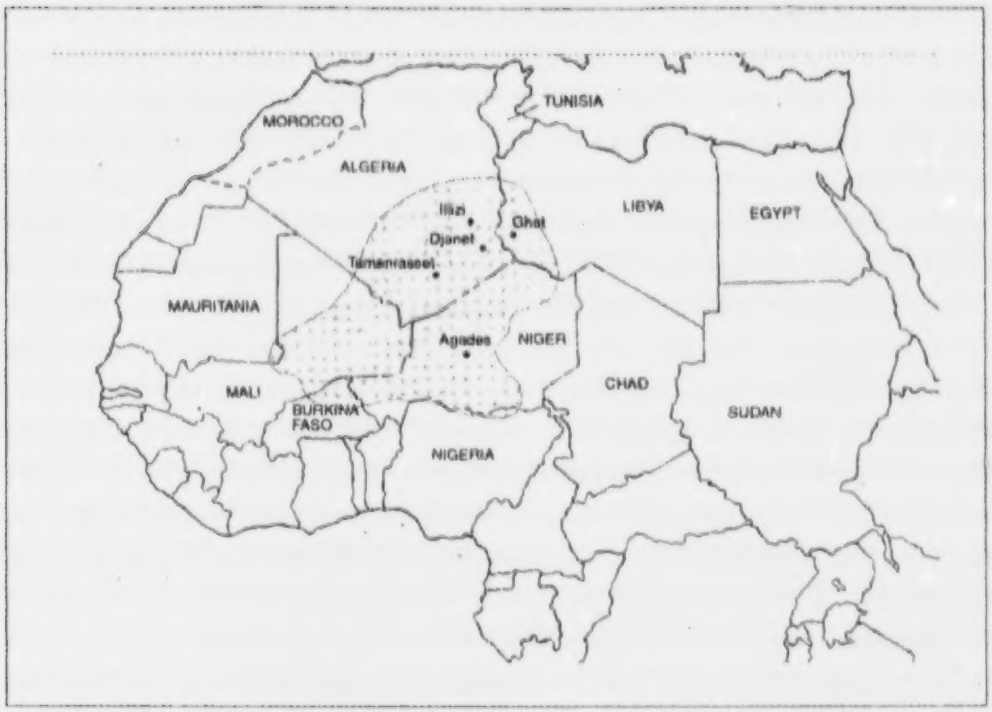
generally described as nomadic pastoralists, the traditional Tuareg economies of these regions were both complex and fragile, depending in varying degrees on controlling caravan trade, raiding, animal husbandry (camels, goats, sheep and, in the south, cattle) and forms of "slavery". Nearly all Tuareg groups maintained close socio-economic relations with the agricultural communities around their margins, notably with the peoples along the Niger River, the millet-producing regions of southern Niger and the oases of Touat and Tidikelt to the north of Ahaggar. Indeed, the traditional economy of many of the Tuareg of the Malian districts of Timbuktu, Gao and even Kidal, can best be described as agro-pastoralism.

The recent histories of these Tuareg populations have been heavily influenced by their respective colonial experiences and, over the last forty or so years, their very different post-colonial histories.

In **Algeria**, at the time of Independence (1962), the Tuareg (Kel Ahaggar and Kel Ajjer)[6] comprised some 50% of the population of Ahaggar and Ajjer. Today they comprise only 15%. This is partly because of the migration into the region of Algerians escaping the unrest and killing that swept much of the north of the country during the 1990s. Since independence, most Kel Ahaggar and Kel Ajjer have settled in the many small villages and cultivation centres of Ahaggar and Ajjer, as well as in the main town of Tamanrasset (pop. c.100,000). Current surveys indicate that only about 3,000 Algerian Tuareg have managed to retain their nomadic lifestyle. Although Algeria's Tuareg comprise only 0.1% of the country's population, their traditional lands cover about 20% of national territory. Notwithstanding a few 'ups and downs', Algeria's Tuareg, compared to those of Mali and Niger, have, however, been fairly well accommodated and integrated into the post-colonial State.[7] Notwithstanding the prejudice expressed by the state towards nomadism in its formative years, Algeria's Tuareg have had full access to and benefit from the services and institutions of the state, especially in the fields of education, health care and labour markets.

In contrast to Algeria, the recent history of the Tuareg in both **Niger** and **Mali** has been dominated by their rebellion against their respective governments. The underlying causes of the rebellions in both countries stem from a combination of deep-seated economic and political marginalisation, the roots of which are to be found in the colonial era. Both countries experienced a disastrous cycle of drought from 1965 to 1990, with peak crises around 1973-74 and again in 1984-85. In Mali, food aid destined for the drought-devastated north was embezzled by senior army officers, to be sold off abroad with the proceeds being used to build and furnish luxurious villas, known as

354



"castles of drought" in Bamako. Similar misappropriations occurred in Niger. The result of the drought and the embezzlement of food relief was such that many Tuareg were forced to abandon their traditional pastoral base and to migrate within their countries, or across the frontiers. In both countries, the Tuareg were effectively excluded from any form of political incorporation into the post-colonial state.

Amongst the Tuareg of Mali, grievances against the government were fuelled by their memories of their earlier rebellion in 1962-64, which President Modibo Keita crushed brutally with the help of fighter-bombers, before imposing a harsh military rule.

Earlier issues of *The Indigenous World* [8] have given summary accounts of the rebellions that began in 1990. To remind readers of those events:

Brief outline of the Tuareg rebellions

Tuareg rebellions broke out almost simultaneously in both **Mali** and **Niger** in May-June 1990, with attacks by the *Mouvement Populaire de l'Azaouad* (MPA) [9] against government outposts. The uprisings, which began in Kidal and Menaka in Mali and at Tchin Tabaraden in Niger, were spearheaded by Tuareg combatants known as *ishumar*. This word is the berberisation of the French word *chômeur* meaning "un-

BEST COPY AVAILABLE

employed". These were the young men who, disillusioned by the repression of their own governments and forced by the droughts of the 1970s and 1980s to search further afield for means to support their families, sought work elsewhere in North Africa. Some went to Algeria but most finished up in Libya where they received military training and came under the influence of Islamic radicals and Colonel Ghadafi's ideas of equality and revolution. Some were incorporated into Libya's regular forces; more entered the Libyan-sponsored "Islamic Legion" and were despatched as Islamic militants to Lebanon, Palestine and Afghanistan. The collapse of the oil price in 1985 led to hundreds of Tuareg being dismissed from the oil fields and returning home unemployed and resentful. They were joined in the following year by those released from Libya's armed forces after Ghadafi's humiliating failure to annex Chad. Finally, the dissolution of the Islamic legion and the Soviet evacuation of Afghanistan led to a further wave of unemployed and restless young men with considerable military experience returning to their home areas. Their Ghadafi-inspired ideas of equality and justice merely added to the further dislocation of traditional society.

After almost two years of rebellion, a *Pacte National* was signed by the government of Mali and the MFUA (*Mouvement et Fronts Unifiés de l'Azaouad*)[10] – the various Tuareg and Arab groups who had taken up arms. The agreement provided for a cessation of hostilities, the return of displaced persons, the integration of ex-combatants into the army, better political representation and a ten-year development plan for the northern regions. Despite the signing of the pact, hostilities continued and it was not until 1995 that security conditions improved. The official end of the armed conflict in Mali was marked by a ceremony at Timbuktu in April 1996 at which 3,000 weapons, surrendered by the warring militias, were publicly burnt in a ceremony known as *La Flamme de la Paix*.

The numbers of people killed in the Mali rebellion is not known. Atrocities, perpetrated mostly by the army or local militia, occurred in both countries. Several sources put the number of Tuareg killed in each country at over a thousand.

Although the scale of the rebellion in Niger was smaller than in Mali, it has taken longer to establish the basis for peace. An agreement between the government and the rebel coalition of the *Organisation de la Résistance Armée* (ORA) was signed at Ouagadougou in April 1995. This was followed by a Round Table Conference at Tahoua, similar to the Round Table Conference that preceded the 'Flame of Peace' ceremony at Timbuktu. The aim of the conference, attended by the government, the ORA, traditional chiefs and the donor community,

was to mobilise resources for the rehabilitation of the pastoral zones in the north of the country and to develop a strategy for further development, without which a durable reconciliation of the warring parties could not be envisaged. Although the momentum of the peace agreement was kept going through 1996, it was not until the end of 1997 that the 'cantonment' of the ORA's combatants was completed. Having rejected the Ouagadougou Accord, peace was not negotiated with the *Union des Forces de la Résistance Armée* (UFRA) and its three component movements until 1998, with the last ex-rebel groups not turning in their arms until June 2000 when a peace ceremony, based on the principle of "The Flame of Peace", was held at Agades.

As in Mali, it is impossible to say how many people were killed during the course of the Tuareg rebellion in Niger. Not surprisingly, accounts of events differ wildly. It is still unclear what happened on the night of 7th May 1990 when Tuareg attacked Tchin Tabaraden. Tuareg versions say that a small group of unarmed *ishumar* occupied the gendarmerie as a protest against the arrest of some of their fellows, and that a guard was killed by his own weapon in the ensuing squabble. Official accounts claim that three Tuareg groups attacked the prison, the *sous-préfecture*, gendarmerie and post office, resulting in six deaths. What happened in the army's follow-up operations is still open to grave dispute. According to Tuareg accounts, the Nigerian army, after pulverising Tchin Tabaraden, went on the rampage through the Azaouagh region wiping out every nomadic camp they could find. Occupants were buried or burnt alive, or hacked to pieces. At Tasara 24 people were hanged; at Tillia adolescents were publicly executed; a dozen Tuareg were killed at Maradi and hundreds more wiped out at Tahoua. While the government admitted to 70 deaths, international organisations placed the figure at around 600. The Tuareg claim that at least 1,700 of their number were butchered.

The Toubou revolt and massacre

Niger's rebellion was not limited to the Tuareg. In 1994 the Toubou of eastern Niger allied themselves to their traditional enemies, the Tuareg, and also rebelled against the government. During 1997-98 the army crushed the revolt, causing many Toubou to flee to Nigeria for safety. The signing of a peace agreement between the rebel group, the *Front Démocratique Révolutionnaire* (FDR), and the Niger government at N'Djamena (Chad) in August 1998 might have paved the way for their safe return. However, fearful of returning home, they remained in

Nigeria, only to be rounded up in mid-October by a joint military operation involving Chad, Niger and Nigerian forces. Some 950 refugees were captured and escorted to the border where they were handed over to Niger troops. The women and children were separated from their husbands, who were not seen again. In January 1999, a mass grave containing 150 bodies was discovered on the island of Boultoungoure, on Lake Chad in the Diffa region. The Niger government denied that there had been any killings in the region but, in April 1999, the High Commissioner for the Restoration of Peace confirmed the existence of the grave and the bodies of the 150 men whose names were published by the press.

The repatriation of refugees

While the number of people actually killed in the rebellions in each country may have numbered no more than one or two thousand, the effect of the rebellions and the way in which they were crushed has been devastating. The number of people who fled or were uprooted in the course of the rebellions will never be known precisely. The number who fled from Mali to Algeria, Burkina Faso, Mauritania and Niger is estimated at 150,000, while an estimated 15-20,000 fled from Niger to Algeria and Burkina Faso. The repatriation of these refugees has been a major undertaking. It began with spontaneous returns in 1995 and ended in June 1999 with movements that were almost entirely UNHCR assisted. The official UNHCR returnee statistics for the period April 1995 to November 1998 are as follows:

	Organised	Facilitated	Spontaneous	Total
Mauritania	18,656	21,041	4,015	43,712
Burkina Faso	4,710	16,375	2,877	23,962
Algeria	7,691	265	42,748	50.704
Niger	1,091	2,928	8,704	12,723
Senegal	679	0	0	679
Total	32,827	40,609	58,344	131,780

The total level of forced displacements in both countries is likely to have been much higher. The number of formerly uprooted persons residing in the returnee sites assisted by the UNHCR programme in Mali was estimated at 305,000. This amounts to 25% of the total

estimated population of northern Mali. If persons uprooted by the Niger conflict are included, then we are probably dealing with a figure approaching half a million: that is approximately a quarter of the entire estimated Tuareg population. It should also be remembered that large numbers of Tuareg had already moved into other areas of their own countries or across frontiers, especially from both Mali and Niger into Algeria, in their attempt to escape the devastation caused by the vicious cycle of drought. Many of these Tuareg have not, and probably will never, return to their original homes. Many Malian and Nigerian Tuareg who crossed into Algeria either to escape the devastation of drought or the conflict are still to be found there, many of them having intermarried with the local population.

The establishment of resettlement sites

Major steps towards the reconstruction of civilian life in northern **Mali** have been achieved through the UNHCR-funded returnee assistance programme, which was implemented in collaboration with the World Food Programme (WFP) and eleven NGO implementing partners. The programme, which ran from 1995 to June 1999, provided assistance to 638 returnee sites throughout northern Mali. 287 wells were dug or rehabilitated, 123 boreholes drilled and numerous solar or diesel water pumps installed. Food distributions and food-for-work programmes were organised and loans and grants made available to large numbers of individuals and local associations.

Evaluations of the programme have highlighted a number of successes and failures. The programme's overall success has stemmed from two principle factors: the decision to allow the selection of rehabilitation to be made by the returnees themselves and the integrated community focus adopted by the programme. The programme's shortcomings have been the slow and inadequate funding response from donors; its decision not to support measures to help in the rehabilitation of livestock for the pastoral communities, thus favouring sedentarisation at the expense of pastoralism, despite the fact that pastoralism has been the traditional occupation of many beneficiaries; and its short-term nature. Aware of these shortcomings, UNHCR secured the cooperation of partners willing to continue the work. One such partner, namely Programme Mali-Nord (PMN), funded by the German Agency *Gesellschaft fur technische Zusammenerbeit* (GTZ), which operates in the Timbuktu region in a zone between the Niger river and the Mauritanian border, has been immensely successful. By contrast,

the areas of Kidal and Gourma-Rharous have seen far less input from both the government and development agencies. The Kidal Zone has fallen under an IFAD-funded programme known as PSARK (*Projet de Sécurité Alimentaire et des Revenus de la Zone de Kidal*) since as long ago as 1989. Regrettably the project has achieved little, being bogged down in labyrinthine bureaucratic procedures that have rendered it as part of the problem rather than part of the solution.

UNHCR in Mali would have been wise to have followed the example of Niger and appoint a consultant to formulate proposals for multi-year development projects covering the longer-term needs of vulnerable communities, especially in regard to the rehabilitation of livestock. However, the development and implementation of such projects in **Niger** has been hampered by the overthrow of democratic rule and the continued widespread violation of human rights. In 1996, Ibrahim Baré Mainassara overthrew the elected President Mahamane Ousmane. Three years later, in April 1999, Mainassara was himself gunned down by his own presidential bodyguard in what Major Daouda Malam Wanké, who took over the reins of power, described as an "unfortunate accident". Although Wanké allowed elections to be held in November 1999, leading to the return of democratic rule in the personage of Mamadou Tandja, human rights violations have continued. Most serious is the incorporation in the new Constitution, and affirmed by a new law in Parliament in January 2000, of an amnesty to the perpetrators of the human rights violations that occurred in the coups of 1996 and 1999. The enshrinement of impunity in the new Constitution means that no inquiry has been held into the killing of President Mainassara, nor for that matter into either the Toubou massacre on Boultoungoure island or the Tchin Tabaraden massacre of Tuareg in 1990. The result of the overthrow of democratic rule and the violation of human rights was that many international donors, including the French government, suspended international aid to Niger – a measure that further exacerbated the plight of Tuareg returnees who, at that time, were being resettled in the regions of Tahoua and Agades. Their situation deteriorated further as a result of Mainassara's rule coinciding with three consecutive years of drought. If that was not enough, Niger's return to democracy at the end of 1999 coincided with an even more severe year of drought, reducing the 2000 harvest to almost complete failure. This meant that some 3.5 to 4 million people, more than a third of the country's population, were facing severe famine by mid-2001. The situation, made worse by delayed and inadequate international aid, saw entire populations being displaced in the futile search for food. Much of the country

360

has undergone massive environmental degradation as hapless peasants have chopped down trees to sell them as firewood and earn money. The year's drought was reckoned to be as devastating as that of 1984. Appeals for food aid led to a mere 26,000 tons of food being donated, mostly from Nigeria. The year has also seen thousands of people contracting and several hundred dying from a severe epidemic of cerebro-spinal meningitis. However, good rains began in June (2001) with above average and well distributed rainfall continuing through the crucial summer months until September. This means that 2001-2002 will produce enough grain to leave only 16% of the population (according to the Famine Early Warning System) facing food insecurity in 2002. The rains also brought extensive outbreaks of typhoid fever, with hundreds of cases being reported to the north of Agades.

The good rains of 2001-2002, said to be the heaviest in forty years in **Mali**, brought heavy flooding in Bamako and elsewhere along the Niger. On the positive side, however, Mali expects to produce surplus food this year and is unlikely to require any food aid between February 2002 and the next harvest in September-October. The rains have also been a rare blessing for pastoralists.

Mali's good harvest comes with a new President. The charismatic ex-General Amadou Toumani Touré, the man who once said "only an idiot" would want to be Mali's head of state, was confirmed as President on 23 May 2002 after two rounds of voting.[11] He succeeds Alpha Oumar Konaré who served two five-year terms (1992-2002) after Touré, then head of the paratroop battalion, had arrested the corrupt dictator, General Moussa Traoré (1976-1991) and set up an interim government to hold free elections. Konaré and Touré have both played major roles in the country's transition to democracy and in the successful peace-making with the predominantly Tuareg rebel movements. Touré's espousal of economic reform, political openness and human rights forebodes well for Mali's immediate future.

The roles of Algeria and Libya

Notwithstanding her own political crisis of the last decade, **Algeria** has played a major and ongoing role in trying to resolve what has generally been referred to in both Mali and Niger as the "Tuareg problem" and so bring peace and stability to the region. This role has, of course, been one of enlightened self-interest but it stands in marked contrast to that of **Libya's** Colonel Ghadafi who has been the single most destabilising force throughout the Sahel and much of the Central Sahara for some time.

361

A new era of banditry

There is a danger in seeing the withdrawal of UNHCR support in 1999, the return to democratic rule in Niger in 1999 and the 2002 elections in Mali, along with the abundant rains of 2001, as marking some sort of "closure" to the story of the Tuareg rebellion. The future stability and security of what are regarded as traditional "Tuareg areas" – **northern Mali, northern Niger and southern Algeria** – have most certainly not been achieved. On the contrary, the last three or four years, from about 1998, perhaps a little earlier, have seen much of this zone, especially the immense Azaouagh valley region that extends south-westwards from Tamesna into the Kidal and Menaka regions of Mali, becoming the focus of a new form of banditry and the fulcrum for the future political stability and security of this large corner of Africa. Banditry in the region has not only increased in the last decade or so as a result of the return of the *ishumar*, the opportunities for smuggling and the circulation of small arms throughout the region but it has taken on a new form and scale since the late 1990s with the arrival in the region of one of Algeria's more colourful outlaws, a certain Mokhtar Ben Mokhtar. A Metlilli Chaamba (not a Tuareg), Mokhtar initially outlawed himself from the Algerian state when, after a spell in Afghanistan (where he reputedly lost an eye), he sought to revenge the death of his brother who had been shot by police when caught in a smuggling heist. By 1998 his "war against the Algerian state" (not its peoples, he was careful to point out) resulted in many of the roads in southern Algeria, especially the main highway from In Salah to Tamanrasset, being unsafe for travel unless protected by military convoy. In the second half of 1998, his small but well-armed band is reputed to have hijacked 365 4WD vehicles, mostly from the Algerian gendarmerie, oil companies and other state organisations. He is also said to have shot down a military aircraft. By 1999, Algeria's security forces had gone on the offensive and effectively forced him to hole up in the vast and little known Azaouagh valley, where his presence (described as "terrorist threats from dissident Tuaregs and GIA fundamentalists") led to the cancellation in January 2000 of the Niger leg of the Paris-Dakar-Cairo rally. With the strengthening of Algerian security, including hot pursuit operations by helicopter gunships across Algeria's southern border, Mokhtar's activities have moved increasingly from his professed war against the Algerian state, to the management of large-scale smuggling of cigarettes, armaments, and the training and provisioning of the GIA. [12] More dangerous to the stability and security of the region than Mokh-

362

tar's own activities are the unknown number of "copycats" and associated networks that he has spawned, and the attraction that his activities and reputedly fundamentalist ideology offer to the many, mostly unemployed young men of the region.

The reason why this sort of banditry has been able to establish itself in this region is simply because the "space was left open for them" by the failure of the above-mentioned development agencies to establish themselves in these areas. This failure stems from both the UN's and other donor agencies' refusal to fund the required level of security that neither Mali or Niger have been able to provide.

The further development of this form of banditry, on such a scale and over such an extensive geographical area, is not only a major impediment to the future social, political and economic development of much of northern Mali and northern Niger, and therefore the well-being of the Tuareg themselves, but it threatens the stability and security of much of the Sahel and Central Sahara.

Renewed political confidence and consciousness

In conclusion, it should be noted that the events outlined in this article, most notably the Tuareg rebellions in Niger and Mali and the subsequent movement and displacement of individual Tuareg families and groups over the traditional Tuareg regions of Algeria, Mali, Niger and beyond, are having profound social and political implications, not the least of which has been to activate long dormant social (kinship, tribal, etc.) ties between regions that have been transferred from the "Tuareg domain" to "national domains" by arbitrary lines on a map. Heads have been turned to what has been going on in each other's countries. Access to new technologies, notably the phone and Internet, along with an increased knowledge and awareness of international conventions on human and indigenous rights, is giving the peoples of these regions renewed political confidence and consciousness. In the summer of 2001, Algeria's President Abdelaziz Bouteflika visited the south to be greeted in Illizi and Djanet with a signed "petition" demanding the removal from office of the *wali*,[13] and on the streets by a mixture of respect and ribald chanting, the message of which was quite clear: "If he (the North) didn't want the South to be part of Algeria, he was just to let them know!" He noted the mood and, on his return to Algiers, the *wali* was duly dismissed. The northern Tuareg are once again looking south, and the southern Tuareg are looking towards the north.

363

Notes and references

1 The word "Tuareg" is an Arabic designation and rarely used by the Tuareg, except in conversation with outsiders who they know will probably not understand their complex terms of self-designation, which tend to refer to their own social categories, embracing such things as descent group membership, social class, language and residency.

2 See *The Indigenous World* 2000-2001, p. 226. More or less at the time of the publication of this issue (April 2001), unwarranted shootings of detainees by gendarmes in Kabylia triggered off widespread Berber unrest with demonstrations and violence spreading into many other regions, including the capital Algiers. After a year of almost continuous protest and unrest by Amazigh peoples in the north of the country, the government finally announced in April 2002 that Amazigh (Berber) would henceforth be recognised as a national language.

3 Approx. half a million square kilometres in each of Algeria, Mali and Niger.

4 Based on national, but probably very inaccurate, data.

5 There are a few thousand Tuareg in Libya in the regions of Ghat, Ghadames and the Murzuq.

6 Kel means "people of".

7 A collection of eight contemporary research papers, detailing the situation of Algeria's Tuareg, is being prepared as a "Special Issue", (entitled: *The Tuareg of Algeria: Social Change and indigenous Rights*) of the Journal of North African Studies. Publication is expected in 2003, vol. 8 number 2.

8 See previous issues of *The Indigenous World* during the 1990s, up to and including the Yearbook for 1997-98.

9 *Azaoua (Azawa)* is the word for an eating bowl as well as the name of a depression north of Timbuktu. The term has come to signify all Mali's northern regions of Timbuktu, Gao and Kidal.

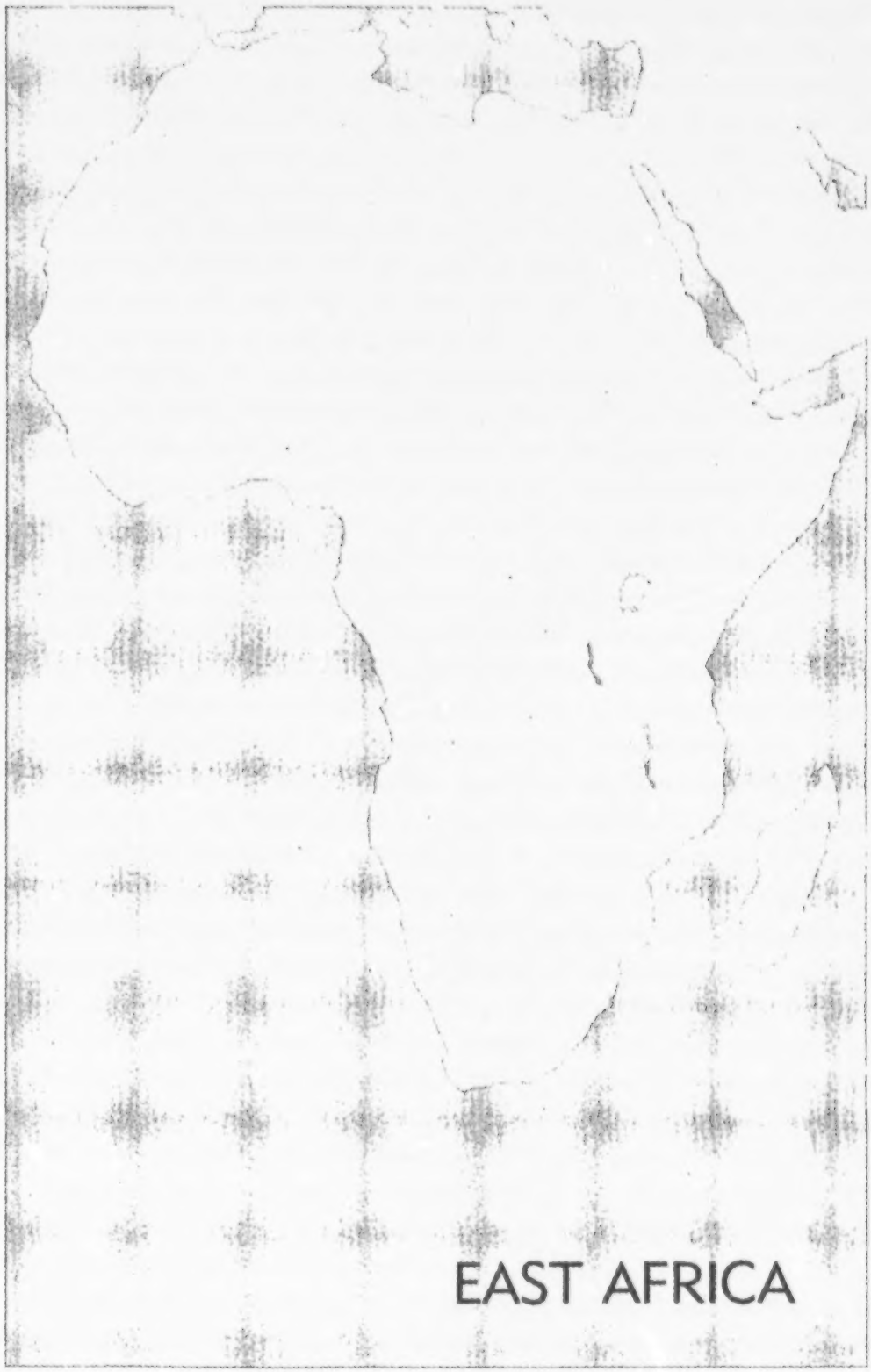
10 The MFUA comprised: the *Armée révolutionnaire de liberation de l'Azaouad* (ARLA); the *Front islamique arabe de l'Azaouad* (FIAA); the *Front populaire de libération de l'Azaouad* (FPLA); the *Mouvement populaire de l'Azaouad* (MPA). In 1994, fighting broke out between the MPA and ARLA for control of Kidal, after which the ARLA split, with the majority accepting the dominance of the MPA and a minority making an alliance with the FPLA.

11 Touré received 65% of the vote, but from less than 20% of the registered electors.

12 His death has been reported in the media on about six occasions.

13 The head of the regional civil administration, appointed by the President.

364



BEST COPY AVAILABLE

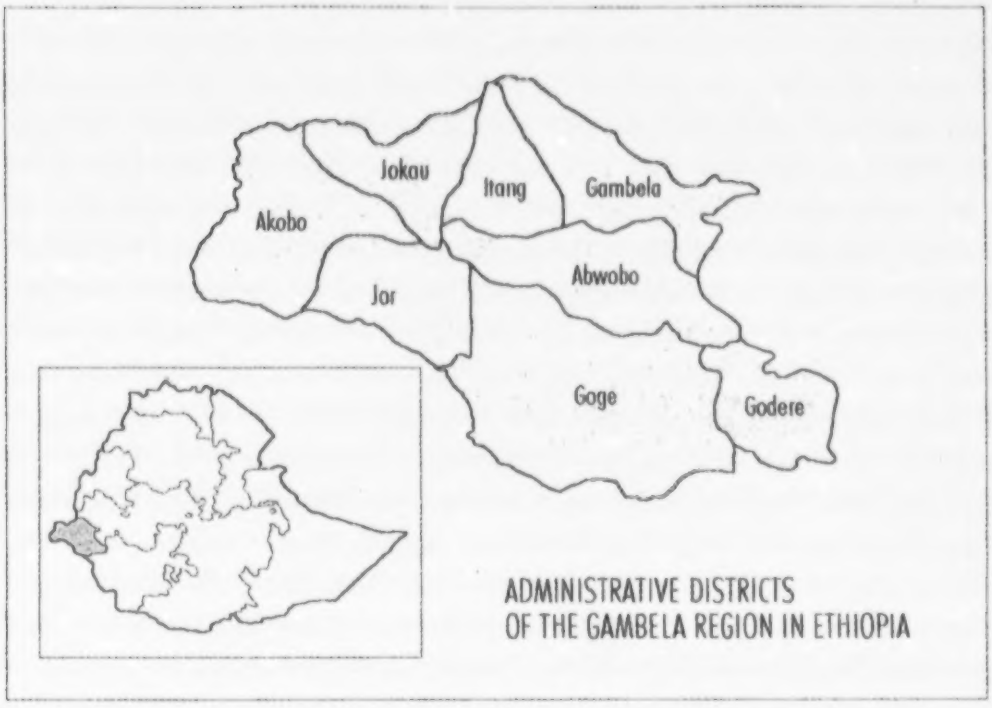
ETHIOPIA

Political crisis

A series of events that shook the fundamental political ideology of the Ethiopian Peoples Revolutionary Democratic Front (EPRDF) took place in the year under review. Students at the Addis Ababa University demonstrated against the deplorable situation on campus. These general protests led to the death of over 41 students and other demonstrators, arrests of civilian population, political opposition parties' members and other prominent human rights activists. Furthermore, the killing of Kinfe Gebremedin, senior Tigray Peoples Liberation Front (TPLF) cadre and head of security operations in the government was a serious setback to the political process in the country. His death, added to power struggles and divisions within the ruling TPLF/EPRDF political party, gave room for serious doubts regarding the process of democracy building.

The crisis within the ruling political party has now temporarily come to an end. Yet the long-term general effects on the indigenous population of the country deserve special attention. It is important to consider whether the political crisis has brought any meaningful change to the current constitution or administrative structure that recognizes various indigenous peoples' territories in the country. In all its colorful provisions, including a hypothetical clause on the right to self-determination, the current Federal constitution should not be denied its potential significance to the indigenous population. The constitution embodies major international instruments that Ethiopia, through its UN membership, has ratified, signed, adopted and has obligations to respect and honor. However, many indigenous peoples' states (states such as Gambela, Somali, Afar and Benishungule-Gumuze) face numerous difficulties in implementing their constitutional rights due to manipulation of political and economic processes by the federal authorities.

The spill over of the TPLF political crisis has manifested itself in the Gambela state, where serious divisions within the Nuer ethnic group have occurred as part of a political power struggle. The effects have been devastating for the ambitions and the aspirations of the indigenous people in the region. In response to the conflict, central government restricted the activities of the umbrella organization, the Gambela Peoples Democratic Front (GPDF) and the Nuer-based political party the Gambela Peoples Democratic Unity Party (GPDUP).



ADMINISTRATIVE DISTRICTS
OF THE GAMBELA REGION IN ETHIOPIA

The restriction on these EPRDF allied political parties has exposed the failure of its cadres to sustain durable peace between different ethnic groups and within ethnic groups. The GPDF was a creation of the EPRDF leadership aimed at eliminating the remnants of the grass-roots liberation organization, the Gambela Peoples Liberation Movement. Three people were killed, 18 were injured and more than 100 innocent Nuer people were arrested during the conflict.

Oil exploration

The threat to the indigenous Anuak people caused by the first phase of oil exploration in their areas came to an end when the Canadian oil company involved pulled out at the last minute. Yet, the matter is far from over. Recently, a high level Ethiopian delegation led by Prime Minister Meles Zenawi visited Russia, where it was reported to have undertaken an exploration deal in the Gambela area. As in the case of the first negotiations with the Canadian oil company, consultations have not been conducted with the affected indigenous peoples. In the negotiations with the Russians, the same trend has availed itself again, as the consent of the indigenous people is not being taken into account and they are being entirely isolated in the negotiation process.

BEST COPY AVAILABLE

Ethiopia's oil exploration strategies pose a serious potential threat to the indigenous peoples in Ethiopia. Whether these strategies may entirely eliminate the indigenous peoples and dispossess them of their land remains to be seen.

Under the pretext of international border peace-keeping, three military camps are in the process of being designated and will soon be in operation. According to a report from the region, these sites will include two areas under scrutiny for oil exploration: Adhura and Jor. The third site is located in the airport under military control a few miles from Gambela town. These additional military sites will undoubtedly increase the military personnel in the region, which would make life more difficult than ever. Despite the security concern of the government, the establishment of the military sites is believed to be an advance preparation for oil exploration in the nation.

For exploration purposes and other reasons, the army division that was previously located at Jimma to command the military activities of the western part of the country has been moved to Gambela, threatening the free movement of the indigenous population in the area. Many innocent indigenous people have fallen victim to their operations.

Ethnic conflict

> *War does not erupt overnight. No matter how disparate or complex a society may be, communal violence does not erupt unprovoked. Inevitably, it is the manifestation of accumulated hostility and aggression between opposing sides...*
>
> *Conflict often breaks out when one side has the capacity to incite violence, while the other neither has the means of defending itself, nor the means to counter-attack.*[1]

Neither the Anuak nor the Majanger people, who were involved in a bloody conflict in early 2001, had the capacity or the motive to incite the violence. The ethnic conflict that took place in Godere and which devastated the neighbouring districts both economically and socially cannot be attributed to the two affected groups as such. Historically, the Anuak and Majanger ethnic groups have lived side by side without any sign of conflict or hostilities. Accumulated hostilities and aggression of any sort have hardly been noticed in their relationship. It seems that the conflict erupted after a group of Anuak women and men were tortured, raped and killed by members of radical Majanger

people. Following this tragic incident, wide-ranging killings of innocent men and women from both sides took place, and destruction of property and displacement of innocent inhabitants from the neighbouring districts - Gog, Abwobo and Godare, were widely reported. The federal authorities have remained silent on such high-scale ethnic conflicts that claim the lives of children, women, and the elderly, who are incapable of defending themselves. No attempt has been made to investigate the cause of the ethnic conflict and bring those responsible to justice. Nor has there been any local or national media reports on the conflict. Unlike many other areas in the country, the Gambela area is unofficially restricted from international media coverage.

Education

In Ethiopia, which is a multiethnic society, the education system reflects the typical Abyssinian culture and language. Amharic remains the dominant language throughout the country and, until the overthrow of military rule in 1991, there was no serious interest in incorporating other languages.

The 1994 Education and Language Policy of the transitional government of Ethiopia, which accorded indigenous peoples' languages equal rights, was a cornerstone in the positive implementation of the international instruments that had been accorded lip service by successive governments in the country. This unique departure from assimilationist and culturally destructive policies was reaffirmed by the provisions of the 1994 Constitution, which recognizes that all Ethiopian languages enjoy equal state recognition. Furthermore, the Constitution remains a point of reference for its provision that the federation members have the right to determine their respective working languages (Ethiopian Constitution 1994:article 5). However, progress in achieving this social sector policy in the indigenous territories has, for various reasons, lagged behind.

In recent years, efforts to undermine indigenous languages have been underway, including setting up separate schools in the indigenous territories that provide education in the Amharic language. In the case of Gambela, the strategy to undermine the indigenous peoples' languages came into effect in 2000. A separate school that provides education in Amharic is now in operation, providing education to a small exclusive sector of the society.

There is no doubt that the existence of a separate education system accessible only to a few community members will, in the long run, act

BEST COPY AVAILABLE

as a power base within the nation. The majority of indigenous children who are to build up the nation will be discriminated since Amharic, which still serves as the official language at both federal and state level, is given special status over indigenous languages. Given the past political battle of 1995 within the state, which made the Amharic language and culture a dominant criterion in the competition for power, it is obvious that this trend is a recipe for discrimination. During the 1995 political power struggle between Gambela nationalists and Ahmaranized indigenous groups, the immigrant highland population in the towns entirely supported a cultural assimilation policy towards the indigenous people.

Hence, there is no doubt that in the long run such an education system will favor a few indigenous people; mainly children of those in power within the movement and those few who would be capable of sponsoring their children.

Local elections

Local elections in many parts of the country - Afar, Tigray, Amhara and Oromia - took place in February/March 2001 with the exception of the southern parts, where local elections were held toward the end of the year. It is not clear as to when democratic local elections in the Gambela, Somali and Benishangul-Gumuz states, whose peoples are being kept waiting to cast their ballots, will be held.

As the rainy season approaches, the local elections in these states of the country can hardly be anticipated to take place in this reporting period. There are obvious reasons for the Ethiopian government to delay local elections in these sensitive regions. Grassroots indigenous political parties opposed to the EPRDF and its regional allies enjoy the majority support in these areas. It is therefore an important technique of the Ethiopian government to delay elections in these regions where the opposition parties have a mass supporter base as compared to the EPRDF-controlled political parties in order to control the indigenous grassroots parties.

Imbalance in participation

Ethiopia as a modern entity came into existence through conquest and mere claim of virtually autonomous nations in the west, south and east. During its history of expansion, its leaders have done little to

help the newly acquired territories participate in countrywide development and in economic and social policy and program formulation. While the economy of the country is built on resources from territories mainly in the southern, western and eastern part of the country, the people in those areas have been mere recipients of policies and programs, some which do not take into account their socio-economic background.

Little could be said about the involvement of the indigenous people in the countrywide decision-making process during the imperial and military regimes. Rendered second-class citizens, their potential and capacity were deemed invaluable. A new departure ought to take place during the current regime, which claims to promote democratic governance and a federal form of administrative arrangement. Yet, since it took power in 1991, the EPRDF government has closed the doors to indigenous participation in important policies and programs of the country. There has thus not been any cabinet minister or any vice ministerial position for any candidate from Gambela or Benishungul Gumuze states.

For unclear reasons, their participation has been limited to the Foreign Service where a couple of them have been appointed to the Ethiopian representative missions. Being far away from the decision-making process, their influence may, however, be limited.

Reference

1. **Rupesinghe, Kumar and Sanam Naraghi Anderlini. 1998.** *Civil Wars, Civil Peace. An Introduction to Conflict Resolution.* London: Pluto Press.

REGIONAL PROCESSES

The East African Legislative Assembly and the gender factor

The process of regional cooperation between the three East African states (Kenya, Tanzania and Uganda) has continued and, by the end of the year, it culminated in the creation of the East African Court of Justice and the East African Legislative Assembly. The President of the court is Kenya's High Court Judge, Moijo Ole Keiwua, whose

371

appointment was much celebrated by the Maasai who see in it the opportunity for them to forge closer ties between the communities that have been split by the political boundary. However, so far on paper the court has largely been mandated to handle legal affairs between states, despite the fact that there are many issues between communities that the people themselves see as needing resolution by the court. Nevertheless, bringing the court down from the affairs of states and closer to the issues of communities is going to be a challenge. The Kenyan media refers to such interests as "narrow" and "parochial".

The highlight in the nominations for the East African Legislative Assembly is the gender factor. It came about in the allocation of seats, whereby women were to be granted a number of seats by each state. However, in Kenya, while opposition parties complied with the numbers of women nominees, the ruling party, KANU was not quite prepared. It could only afford one seat and even that one was allocated to the wife of one of the cabinet Ministers. Although the nominee was appointed in her own right, the move sent the message that the ruling party was seeking to control the affairs of the East African Parliament in its favour. The reluctance to grant women rights, however, led to the conclusion that, of the three East African countries, Kenya is the country in which gender relations are most strained. The other two countries have developed traditions of setting-aside one third of parliamentary and local authority seats for women, with Uganda going the furthest by having a woman Vice President.

Maa Cultural Festival in Nairobi

The annual Maa Cultural Festival in Nairobi was again hosted this year by the Reto Women's Association. This is a Maasai women's organization that includes women from five districts of Kenya Maasailand and whichalso networks with Tanzanian counterparts. The Festival brought together all five sections of the Maa community (Maasai, Samburu, Iltiamus, Arusha and Parakuyo) to celebrate and promote their culture. A total of around 800 attended of whom 100 were from Tanzania. The participation of the Tanzania group was made possible with support from IWGIA.

The occasion was also used to strategise together on ways to protect, promote and revive Maa culture and identity. Cultural festivals provide a perfect opportunity for the Maasai people to build cross-border collaboration and revive some cultural things that would otherwise be lost. The public at large was informed about the richness

of Maa culture and the occasion was used to prepare the groundwork for future Maa cultural promotion.

Strategically, it was decided that cultural festivals should be used in future:

- To enhance the unity of Maa people in different areas.
- To strengthen Maa people and organizations through enhancing managerial capacity.
- To act as a link between Maa people and organisations in Kenya and Tanzania.
- To advocate and lobby on issues of primary concern for Maa cultural heritage.
- To serve as a watchdog for misuse and abuse of Maa names and culture.
- To facilitate a process in which advocacy and lobbying issues are jointly identified, analyzed and addressed.
- To provide support to needy organizations in terms of fundraising, information, links, skills, etc.
- To work for the promotion and enhancement of representation of Maa people in relevant government, political and social structures.

During the interaction and consultations between Kenya and Tanzania Maasai, various issues were discussed, such as the use of the word Maasai by different businesses. Examples were shared e.g Maasai Hotel, Maasai studio, Maasai Camp, Maasai tours, Maasai Giraffe, Maasai Park, Maasai Curio shop, etc, etc – the list was endless and yet the Maasai themselves did not and do not have anything to do with such premises. Often, the Maasai were neither the owners nor the beneficiaries of such businesses. Although there are many other ethnic groups in both Kenya and Tanzania, you hardly hear any business premises with the name Wanyaturu Camp, Wakwere Hotel, Kikuyu, Chagga etc

During the consultations held between the Maasai from Kenya and Tanzania, discussions were held on how to revive some indigenous symbols that were used by the Maasai to signify property rights and whether the same symbols could be adopted and used for copyright purposes. The Maa people traditionally used "*Ormishire*" (branding) and "*Orponoto*" (ear notching) as symbols to mark livestock ownership. These symbols were used to establish the relationship between property (livestock) and owners (specific Maasai clans). It was proposed that such symbols should be revived and used to mark

and protect different things (cultural items such as artefacts) that belong to the Maasai people and culture. These symbols will again serve as a copyright for anything Maasai. "*Ormishire*" was put as an identity on one's property meaning that, if you could identify your property, no one could claim or use it without your consent. Why is it that the Maasai cannot have the patent rights over their own traditional items such as dress and ornaments? Some concrete steps were proposed to be taken collectively in order to affirm Maasai rights to their resource base, identity, language and culture as a whole.

One such step that it was decided to take was an attempt to preserve and promote the Maasai language, which was seen by all as the soul of Maasai culture and identity but one that is slowly disappearing, especially among Maasai professionals who live and work outside of their indigenous communities.

Language is a repository of culture and, as such, it is the essence of one's own identity. It serves as a unifying factor among different Maa groupings in both Kenya and Tanzania. Participants of the Festival felt that if the Maa language were lost, the Maasai as a community would also lose their unity, culture, identity and pride.

KENYA

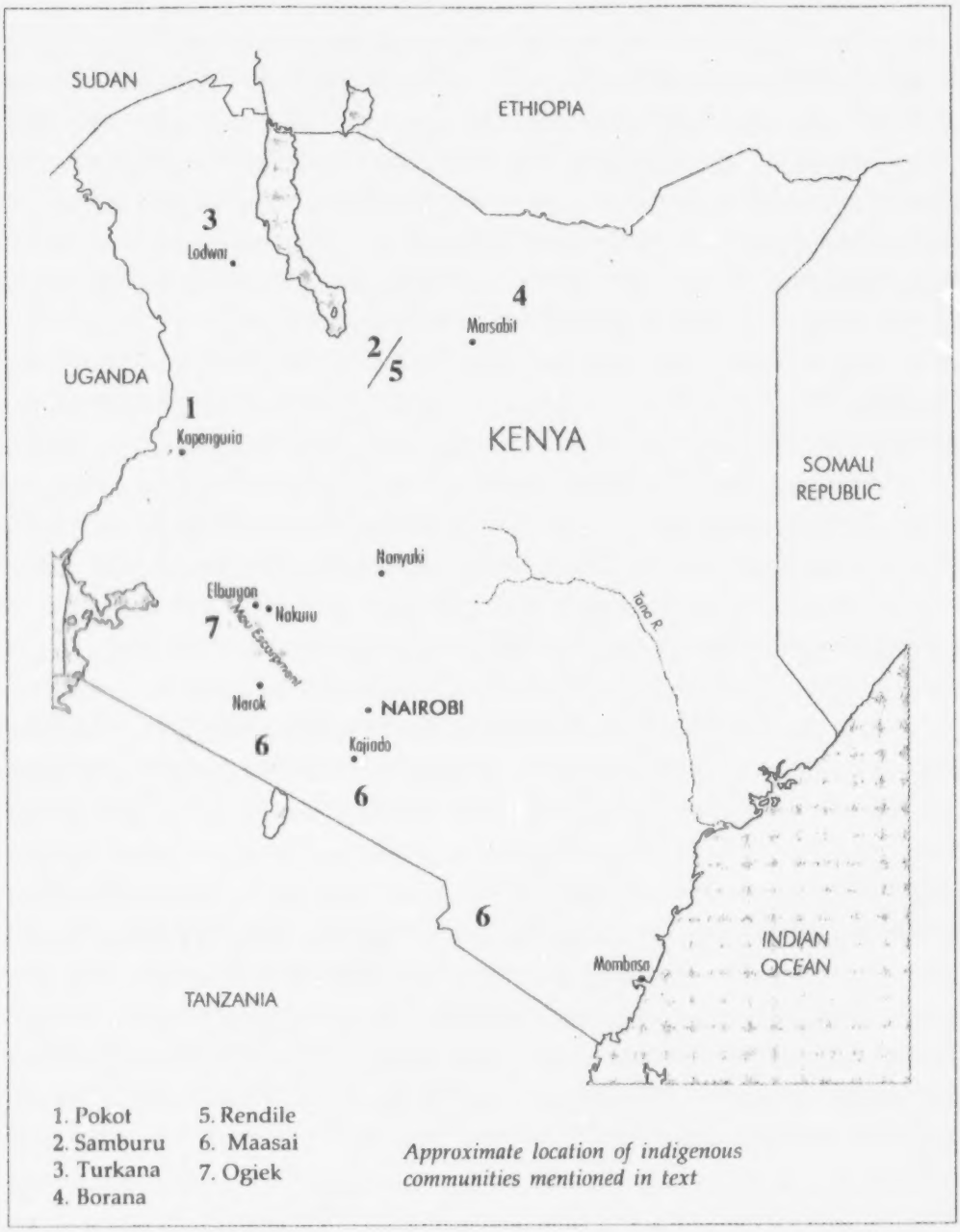
The events that have a bearing on the lives of indigenous peoples in Kenya in the year 2001 include the following:

1. The constitutional review process
2. The Ogiek case
3. The Pokot claims for lost territory
4. The creation of the Maa Pastoralist Council
5. Clashes between farmers and pastoralists

The constitutional review process

The constitutional review process that had stalled a year ago was back on track by the early part of 2001. The Ufungamano Initiative[1] finally agreed in principle on a common process for the review of the

374



Kenya constitution. This breakthrough paved the way for the eventual merger of the two groups in the Kenya Constitution Review Commission (KCRC). The thirteen points to be agreed upon by the two rival bodies were endorsed and the chairman of the KCRC agreed to be sworn in along with commissioners from a cross-section of societies in the country. During the next several months, the KCRC conducted seminars to seek expert views on a wide range of topics including land, governance and cultural rights. These are the

BEST COPY AVAILABLE

areas where indigenous issues are at variance with those of the mainstream societies.

The appointment of district coordinators was riddled with controversy following claims by some districts that the persons appointed to act as coordinators in their districts were not originally from the district and that they should be replaced by an indigenous person from the same district. The commission accepted the views of the community and agreed to replace the coordinators. However, by the end of the year the replacements had not been effected and this undermined the review process in the districts since the communities were not prepared to present their views to the commission during their visit to the districts. Kajiado, a district occupied by the Maasai, was one of the districts affected by this problem.

Although the review process then proceeded as planned, the year ended and parliament adjourned for a three month Christmas recess without passing the Constitution of Kenya Review (Amendment) Act 2001, which would entrench the review process in the constitution. The passing of this Bill was deemed significant since it would safeguard the constitutional review process from political manipulation. Fear was expressed by the opposition parties that the President might use his powers to disband the commission should it be seen to be going against the political interests of the ruling party and its allies. The review process was still not compatible with section 47 of the constitution, which means that it could still be challenged in a court of law. Section 47 (2) states that, "A Bill or an Act of parliament to alter the constitution shall not be passed by the national Assembly unless it has been supported on the second and third readings by the votes of not less than 65% of all the members of the Assembly." This was not done in respect of the review Act.

As it is, the constituency forums, the national constitutional forum and the referendum provision are not provided for in the current constitution. This has made it difficult for the constitutional review team to capture the full attention of the public since there is fear that it would be disbanded in midstream, as has happened to other commissions. However, the commission is still in place and the fear still persists.

The Ogiek case

During the past year, the Ogiek case for rights to ancestral territory has continued to occupy the headlines. The legal battle is against the Kenya government over rights to the East Mau forest. The area had

376

been declared a protected forest area leading to the eviction of about 5,000 Ogiek who have since been made homeless and are without means of livelihood.

Some of the gazetted area is said to be protected for the customary territorial and foraging rights of the Ogiek, yet the Ogiek are kept away from the area. At the same time, no effort has gone into protecting the area against possible encroachment and logging. Instead, the government has allocated some of the forest to outsiders to be used for other purposes. The Ogiek took the matter to court and the High Court declared an injunction on any further land allocations until the dispute had been resolved. Despite this injunction, however, the Ogiek have suffered continued harassment and threats of eviction. By the end of the year, the case was dismissed on a technicality but the Ogiek have appealed.

The year also saw the Ogiek celebrate a cultural festival during the middle of the year which, among other advantages, served to cement relations between the dispersed Ogiek groups as well as create unity of purpose, particularly on the issue of territory.

The Pokot by-elections and claims for lost territory

When, in the year 2000, the Pokot representative tried to defend the rights of Pokot to their ancestral land, he was called a "national enemy", a "tribalist", an "inciter", a creator of "unnecessary animosity" by the mainstream media. He was accused of dividing Kenyans along tribal lines, and reminded that Kenyans were free to own land anywhere in the country. One person even advised him to leave politics since his outbursts bordered on hatred, etc. (*People*, 3 February, 2000).

The passing away of Hon. Lotondo, the long-serving radical member of parliament who was much revered by the Pokot, has led, through a by-election, to his being replaced by an equally radical representative, Samuel Moroto. The campaign attracted much attention and the government came out strongly in support of a candidate who was not favoured by the majority of the Pokot. A highly placed government official was said to have visited the area to campaign for the preferred candidate. Like most indigenous marginalized people in Kenya, the Pokot have always supported the ruling party, KANU. However, like other people they also have very serious problems with the party. Since it has become increasingly difficult to rig elections in opposition-controlled areas, it is an open secret that the ruling party contin-

377

ues to rig elections in other parts of the country. The usual intention of the party is to select candidates who may be useful for the party, although not necessarily for the people. The process, which is quite widespread, results in the selection of unpopular leaders who can be easily manipulated by the party for any number of reasons.

According to the Pokot, the same thing was going to happen with them. When they sensed it, they quickly developed criteria that would have to be met by a suitable leader. Of these criteria, the most important one, and one that could be of value to other indigenous peoples in similar circumstances, was that the potential candidate would have to demonstrate total allegiance, first and foremost to the Pokot and secondly to the party. Not the other way around. The candidate who was favoured by the government had these criteria flipped upside down which, according to the Pokot, would make him a representative of the government, not of the Pokot. Since the new member of parliament met the criteria for a good leader, the Pokot felt that they triumphed in the end.

The Pokot have also continued to lobby and campaign during the year and recently the government has returned two farms (Mwisho Farm and Chepchoina Farm) that were taken from them during the colonial period. Despite the recent gains, however, the Pokot are still demanding the rest of their former ancestral lands from the Kenya government. The discussion presently centres on a 40 sq. km strip of land that was used to resettle outsiders. Some of the land is in Baringo, the President's constituency and has unilaterally been renamed "Pokot East" by the Pokot. The claims, as well as gains, so far made by the Pokot, set positive precedents for other indigenous peoples in similar circumstances.

Following an influx of illegal firearms into the northern zone, cattle raids have turned into serious armed conflicts, polarizing relations between the various groups and making the whole region insecure. The government has paid little attention to these conflicts besides attempting - with little success - to disarm the residents. Other pastoralist communities occupying the northern parts of the country who are equally affected by the conflict include the Samburu, Turkana, Borana, Rendille and others.

Clashes between farmers and pastoralists

Clashes between pastoralists and farming communities in Tana River District of the coastal region have been quite severe during the past year, to such an extent that they dominated the headlines. The pas-

toralist Orma and the farmer Pokomo have clashed over grazing areas that had been cultivated. The clashes resulted in human and livestock deaths, the burning of houses and destruction of property. The dead included a police officer. Following the clashes, the area became so insecure that schools had to be closed leading to calls for the re-arming of home-guards, an action that had not yet been implemented by the end of the year.

Pastoralists' lands in Northern Kenya designated as military training zones

For more than 20 years, the Kenya government has designated the Samburu and Maasai ancestral lands in northern Kenya as military training zones without the knowledge or consent of the residents. The British army, the Kenyan army and, lately, the US marines continue to undertake military manoeuvres using live ammunition, mortars, shells, grenades and ordnances.

Following the exercises, the armies do not undertake clean-up exercises. Consequently, these lands are strewn with unexploded ordnance that has, on many occasions exploded, killing more than 60 pastoralists, most of whom were children. Thousands have been injured, and most of them are permanently maimed. Huge numbers of livestock have also been killed.

On a number of occasions, the residents have requested that the government cease military training in the area and initiate a clean-up exercise in order to prevent human deaths. At the same time, all attempts to get the local media to highlight the plight of pastoralists in the area have not been successful.

In August 2000, OSILIGI, an indigenous organization, organized a national conference that brought together the victims, the government and army to discuss the matter and seek a solution. The government denied knowledge of people being injured or killed, and accused the community of fabricating lies. It further intimidated community members in order to prevent them from cooperating with those fabricating lies.

In the end, the community organization had to seek the attention of the foreign media to get the matter highlighted and to seek redress for the victims of this human rights violation. The matter was finally taken to court and, fearing further public embarrassment, the British army has recently opted for an out-of-court settlement. Other similar cases are still pending and the Kenya government is still colluding with foreign armies to continue violating the human rights of northern pastoralists.

The Maasai create a Council

For the Maasai, the early part of the year saw the initiation of the Maa Pastoralist Council (MPC). The first planning meeting took place one evening in Kenya during a workshop to give inputs to the Danish Strategy for support to indigenous peoples. Subsequent to this, the group has met approximately once every month to deliberate on various issues. After agreeing on the name of the organization, its constitution and articles of association, the body was registered as a society with interim office bearers for Kenya but with the intention of networking with the Tanzania Maasai. They drafted a memorandum on the land question to be delivered to the president and to the Constitutional Review Commission. The MPC, along with northern pastoralists and Ogiek hunter-gatherers, received some financial assistance from the ILO project on indigenous peoples to facilitate a process of undertaking civic education for the constitutional review process. This process is now underway.

Other activities of MPC have included inviting guest speakers on topical issues of mutual interest to the community; developing a position paper that summarizes the concerns of all Maasai sub-sections (*iloshon*); coordinating the beef trade in Maasai areas as a way of reducing exploitation by middlemen and developing a database for all educated Maasai. MPC is still deliberating on an appropriate structure that is informed by the still strong indigenous structure but also accommodates modern situations.

Maa Cultural Festival

As previously described, the annual Maa Cultural Festival took place in Nairobi, Kenya.

Besides sharing special aspects of their culture, the festival also helped to bring together dispersed sub-communities who are threatened with assimilation, such as Ilchamus of Baringo. It also helped to re-establish relations between various groups who were previously unknown to each other. Most important of all, the festival helped to initiate a process of conflict mitigation among different persons. While the Maasai attached great significance to the festival, the Kenyan media highlighted a side incident in which the daughter of one politician declined to greet her father's political rival.

380

Note

1. The Ufungamano Initiative is a civil society group led by the religious sector of Kenya that has appointed a set of commissioners to carry out a more broad base consultation process for the constitutional review. (Editor's note)

TANZANIA

In 2001 and 2002, the indigenous peoples of Tanzania, i.e. the hunter-gatherer communities of Hadzabe and Ndorobo, as well as the pastoralist Barbaig and Maasai,[1] continued to experience various challenges facing them in their lives. This paper serves as an update of the situation of indigenous peoples in Tanzania for the years 2001 and the first half of the year 2002.

Hadzabe and Ndorobo hunter-gatherers

The indigenous hunter-gatherer communities of the Hadzabe and Ndorobo continued to experience further marginalisation, economically, politically, socially and culturally.

Economic liberalization brought about increased use of natural resources such as timber and other forest products, charcoal burning, increased levels of sport or commercial hunting and the expansion of areas under crop agriculture.

All these forms of resource utilization have a negative impact on the livelihoods of indigenous hunter-gatherer communities, i.e. the Hadzabe and Ndorobo. Such forms of land use have all resulted in a loss of the resources that formed the lifeline of the hunter-gatherer communities. In the fierce competition over resources, hunting communities have lost more of their traditional resources, which are critical for the survival of hunter-gatherer communities. This has negatively affected hunter-gatherer communities whose livelihoods are dependent on game resources, wild berries and honey.

The Hadzabe have continued to lose their ancestral lands in areas around Lakes Manyara and Eyasi to small-scale farmers and conser-

381

vation. Similarly, the Ndorobo peoples in Kiteto have been further squeezed towards smaller and remote areas in Amei, Loolera, Kilimoto, Palango, Iltirkishi, Enkusero, Namelok, Napilukunya, Isinya, Kitwai and Nkapapa villages.

The year 2001 and the first part of the year 2002 saw both Hadza and Ndorobo forced to acquire more grain to supplement their indigenous diets. Traditionally, hunting resources coupled with the gathering of wild berries, tubers, roots and honey constituted nearly 80% of the food supply for both groups. More and more grain is now used to supplement dietary needs. Grain is now said to constitute a greater percentage of food supply for the indigenous hunter-gatherer communities in Tanzania than ever before.

Food insecurity is now a recurrent problem and displacement of the livelihood sources of hunter-gatherer communities has forced the Hadza and Ndorobo to depend on emergency food aid from season to season.

Crop farming is slowly gaining acceptance among the Ndorobo in Kiteto and it is emerging as a form of adaptation. As a coping strategy, some of the hunters have also started to keep some livestock, such as chicken and goats. Both farming and livestock keeping are taken up by hunter-gatherers as a means of diversifying their sources of income and reducing vulnerability.

Conservation policies further constrained hunter-gatherer communities' access to their livelihood sources. Hunting and gathering of wild berries, which traditionally mediated their livelihood, have become more restricted, hence creating more uncertainty and perpetual food insecurity.

Subsistence hunting is still banned and outlawed in Tanzania. In the same territories, sport hunting is not only allowed but encouraged by the government as it is seen as a good source of revenue. The ban on subsistence hunting has displaced indigenous Hadzabe and Ndorobo, making them more vulnerable and unable to cope with environmental uncertainty.

Indigenous pastoral Barbaig and Maasai communities

The situation of the indigenous pastoralist cluster of the Datoga that comprises the Buradiga, Bisiyeda, Gisamjanga, Bajuta, Gidang'odiga, Biyeanjida, Darorajega and Barbaig has continued to deteriorate, with increased loss of land and livestock for most of the Barbaig communities, whether they live in Arusha or Singida. This triggered further migrations of the Barbaig into Dodoma, Morogoro, Shinyanga, Iringa, Rukwa, Mbeya and Ruvuma.

Similarly, the situation of the indigenous Maasai[2] pastoralists is critical. The percentage of Maasai in their four traditional districts of Monduli, Simanjiro, Kiteto and Ngorongoro continued to decrease due to the in-migration of farming communities, accelerated by economic and trade liberalisation. Over the last two years, more Maasai have been observed moving to Dodoma, Tanga, Morogoro Iringa and Mbeya.

National context

Indigenous peoples live in an environment that is influenced by national and regional development processes. The following are highlights of some important developments in the country that have had a

BEST COPY AVAILABLE

direct or indirect bearing on the livelihoods of indigenous peoples in Tanzania.

Over the last two years, Tanzania has continued to implement structural adjustment programmes (SAPs). The SAPS have influenced all social, political, economic and governmental sectors. The government has recently formulated new policies for all sectors in line with SAPS and public sector reform requirements.

While the rest of Tanzanian population has felt the impact of SAPs and other liberalisation policies, it is the vulnerable segments of the population that have borne the brunt of such policies. The indigenous communities are among the most affected groups. Further marginalisation and increased levels of poverty are among the most noticeable effects of SAPS.

Government policy on pastoralism

In late 2000, the government of Tanzania formed a new Ministry of Water and Livestock Development (MoWLD). In early 2001, the newly created ministry initiated discussions on how to develop the livestock sector.

Although it is still in its early stages, the direction that policy discussions are taking is that of developing and establishing a ranching system similar to that which has taken place in Botswana or the Botswana model. While it is not the brief of this paper to discuss wider policy issues, it is important to state that whatever policy is adopted it needs to respect the role of the indigenous pastoral communities in managing their resource property rights. The new policy direction focuses primarily on the livestock off-take and providing the urban dwellers with much needed livestock products. The subsistence requirements of herding communities, as well as the security of their land tenure regimes, do not feature as policy priority areas.

The concept of ranching is not a completely new one to indigenous pastoral communities in Tanzania, especially the Maasai. They do, however, have a particular understanding of ranching. Pastoralists see ranching as a tribe or clan owning common tracts of land so that they can look after their livestock and manage pastoral resources. Such a model had no exclusive use and ownership but it was a joint use of resources and common ownership.

The Maasai Range project[3] was in part designed as a step towards the privatisation of land ownership; a system that was intended to stop massive encroachment of farmers onto pastoral areas. Such a programme failed, partly because it failed to adopt the communal model of land tenure, and land holdings and because it failed to guarantee security of land ownership for posterity.

While the newly promulgated type of ranching wants privatisation of land and other ranching resources, the indigenous pastoralists want commonage and this needs to be respected in whatever new policy is developed. There is a need to learn from previous experiences with ranching in Kiteto, Monduli and Ngorongoro Monduli districts as well as the experience in Kenya. Wisdom and caution are needed before deciding which type of ranching system to adopt.

Privatisation of the animal health services forced prices for livestock drugs to go to levels way beyond the reach of most pastoralists. Lack of infrastructure and marketing facilities have made it difficult for the livestock keepers to access livestock drugs. Simanjiro, Kiteto and Hanang districts experience livestock losses caused by different tick borne diseases.

Taxation policy

In Kiteto District, a discriminatory taxation system was introduced in 2002. Both farmers and pastoralists have been paying development and sale taxes. The district council, in an attempt to broaden its revenue base, introduced a production tax for the Maasai pastoralists who live in Kiteto District. This different standard of tax collection levied against pastoralists is discriminatory since farmers in the same district do not pay any production tax.

Demonstrations were organised by pastoralists, arguing that they already paid development tax (Tshs 2,500 per person), sale tax (Tshs 3,500 per animal sold with each seller paying Tshs 500 and buyer Tshs 3,000), and yet they did not gain any services in return.

The pastoralists in Kiteto sent an appeal to the district leadership, strongly recommending that the taxation policy in the district should be standardised throughout the district and that the same rules should apply to all areas as well as to all economic groupings in the district. The pastoralists further argued that there should be standardisation in relation to the principles used in collecting tax from farmers and pastoralists. If there were a head tax for pastoralists there should be a production tax for farmers or some other approach based on equity and in line with the constitutional right to equality.

Emerging issues, analysis and discussion

Shrinking resource base and conflicts

Indigenous communities in Tanzania continued to experience a reduction of their resource base as traditional territories continued to

come under forms of land use other than indigenous ones. The Hadza and Ndorobo are increasingly losing land to small-scale farm holdings, conservation and pastoralism. Similarly, the pastoralist Barbaig and Maasai have continuously lost key pastoral resources to other uses, creating serious land scarcity, and leading to perpetual resource-based conflicts. Conflicts between wildlife and human activities, pastoralism and farming, subsistence and sport hunting have increased in both frequency and intensity.

Inadequate representation

In the political arena, all four indigenous communities in Tanzania have experienced a loss of their indigenous territories and they have been pushed to other areas. They now live in more than 15 administrative districts, where they constitute a small percentage of the population in these districts.

In early 2002, Arusha region, the traditional region of indigenous peoples in Tanzania, was divided into two i.e. Arusha and Manyara regions.[4] Consequently, the indigenous pastoralists and hunter-gatherer communities are now divided into two separate administrative regions. This will only serve to weaken them even further politically and they will be greater minorities in each region without adequate political representation in either region or in any of the ten districts. The problem of lack of representation of indigenous peoples is obvious for both hunter-gatherer and pastoral communities, and this inadequate representation, coupled with inadequate co-ordination of indigenous issues, denies indigenous communities a united voice. The Constitution of Tanzania, article number 21 (2) states that "every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation". Lack of representation in political, legal and government circles is obvious at local, district, regional and national levels.

Cultural rights

Over the years, Tanzania has emphasized a policy of national unity, national language (Swahili), national identity and national consciousness. This overemphasis on national language and identity has suppressed cultural diversity; and distinct cultural values are becoming increasingly weak. This is true of all indigenous communities in Tanzania.

The change in patterns of resource utilisation has impacted on the lifestyles of indigenous peoples. Alienation of sacred sites such as

Endoinyo oo irmoruak (the hill of elders) among the Maasai of both Kenya and Tanzania represents a clear denial of basic cultural rights to indigenous peoples since religious performances and spiritual practices nourish the value system of any society.

The school system, which stipulates that Swahili and English are the only medium of instruction, is slowly but surely marginalising indigenous languages. Often, children from indigenous communities are discouraged from using their language. School curricula do not incorporate any pastoral or hunting and gathering experiences into what is taught in schools, making the education system one of the methods used to eliminate minority languages and cultural practices.

Notes

1 Discussion about other groups in Tanzania that may claim the identity of being indigenous peoples is beyond the scope of this section.
2 Although the Maasai are found in both Kenya and Tanzania, this section deals only with the Tanzanian side of the border.
3 The Maasai livestock and Range management project was a ten year US$ 10 million project initiated in 1969, funded by USAID and managed by the Tanzania government (Ministry of Agriculture). The project was designed to increase livestock off-take and transform the pastoralist Maasai into participants in the national economy through increased commercialisation of their livestock.
4 Arusha region consists of Arusha, Aru-meru, Monduli, Karatu and Ngorongoro districts and Manyara region consists of Mbulu, Hanang, Babati, Simanjiro and Kiteto districts.

387

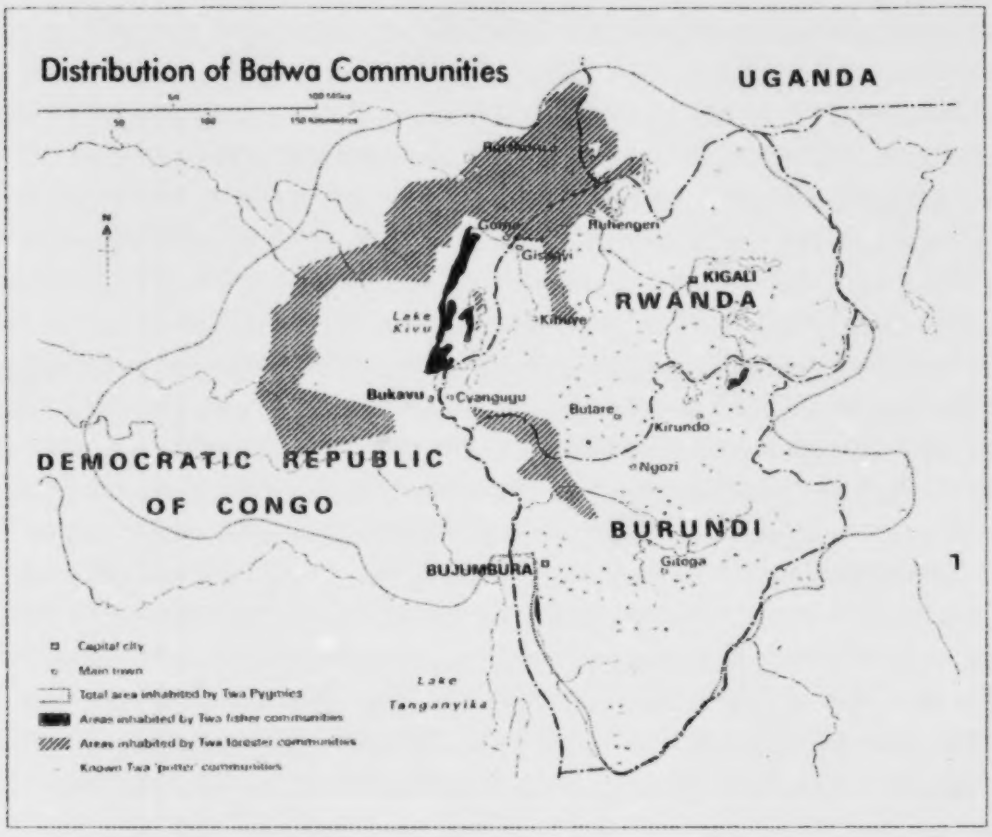
BEST COPY AVAILABLE

THE POLITICAL SITUATION IN THE GREAT LAKES REGION

During 2001, political instability and armed conflict in the Democratic Republic of Congo (DRC) continued to affect the neighbouring countries of Rwanda, Burundi and Uganda. The Kinshasa government, led by Joseph Kabila (the son of Laurent Kabila who was assassinated in January 2000) and backed by Angolan, Namibian and Zimbabwean troops, is fighting rebel movements that control large parts of the north and east of the country, the area where most of the DRC's indigenous "Pygmy" peoples live.

The rebel movements are backed by Rwanda and Uganda, in an attempt to overcome dissidents and insurgents operating out of the DRC – dissidents that the Kinshasa government is unable or unwilling to disarm, or may even be actively supporting. In the case of Rwanda, these dissidents comprise the Interahamwe and former Rwandan army (ex-FAR), perpetrators of the 1994 genocide and who continue to mount cross-border attacks. The most recent attack on Rwanda's north-west provinces occurred in May and June of 2001. Uganda is seeking to halt the activities of the Allied Democratic Front and the National Army for the Liberation of Uganda, which are based in the north-east of the DRC. In addition, the DRC provides a stronghold for two rebel movements operating against the Burundi government, the Force for Defence of Democracy (FDD) and the National Liberation Force (FNL). The continuing existence of these armed elements provides the rationale for neighbouring governments to conduct counter-insurgency measures and maintain the foreign occupation of the DRC. The effects of the conflicts on the local populations are devastating. The International Rescue Committee estimates that 1.6 million people have died in the DRC as a result of violence, disease and hunger. Two million people are displaced, malnutrition and infant mortality have rocketed and 16 million people are considered to be food insecure.

During 2001 there were, however, welcome signs of progress towards peace in the DRC as the inter-Congolese dialogue, facilitated by former Botswana President Ketumile Masire, began to take shape. The dialogue forms part of the peace accord signed in Lusaka in 1999 between all parties to the conflict and aims to bring together representatives from the government, the political opposition, armed opposition groups and civil society to map out a future for the DRC. During 2001, foreign troops withdrew from their front-line positions, Kinshasa said it was ready to hand over to Rwanda 6,000 Interahamwe



militia and ex-FAR and would no longer permit insurgents to launch attacks from the DRC, and meetings were held between heads of state of the countries involved in the conflict and leaders of the rebel groups. The five main groups due to participate in the inter-Congolese dialogue – the government, the opposition, the Ugandan and Rwandan-backed rebel movements and civil society – chose their representatives. However, wrangles about the participation of groups that had not signed the Lusaka agreement, such as splinter groups of the rebel movements, the Banyamulenge (a minority group of Congolese Tutsis) and the Mayi-Mayi (a loose association of armed groups opposed to foreign troops in the DRC), meant that the first Conference of the inter-Congolese dialogue had to be postponed until early 2002.

In Burundi, eight years of violent conflict between Hutu and Tutsi ethnic groups have devastated the country, causing the deaths of some 200,000 persons, massive population displacements and a severe deterioration in the health infrastructure, water and sanitation services. One million of Burundi's 6.7 million population (1999 figures) still depend on humanitarian aid, 432,000 people live in internal displacement sites with acute humanitarian needs and 200,000

BEST COPY AVAILABLE

internally displaced persons live under ad-hoc arrangements. At least another 380,000 people are refugees in Tanzania. An FAO report confirmed that Burundi's indigenous Twa people are the most impoverished group in Burundi. Most Twa lack access to farm land, and the families who do have land are caught in a vicious cycle, being forced - through hunger - to eat the seeds given to them by agencies such as the FAO, leaving few seed resources for planting. Subsisting on an average of US$0.50 per day, most Twa families cannot afford education, health services or clothing for their children.

As in the DRC, there is some hope now that peace may come to Burundi. The peace process, facilitated by former South African President Nelson Mandela, finally resulted in the inauguration, on 1 November 2001, of a power-sharing transitional government of returned Hutu exiles and Tutsis. The first 18 months of the Presidency will be held by Pierre Buyoya, the previous (Tutsi) President, with a Hutu vice-President. After 18 months, this will be reversed, with a Hutu President and Tutsi vice-President. Tutsis hold 12 of the government portfolios and Hutus 14. However, there is still no cease-fire and the rebel FDD and FNL groups continue to launch armed attacks on Burundi from the DRC. Peace in the DRC may paradoxically worsen the situation in Burundi, since the disarming of Burundi rebels based in the DRC may force these anti-government forces to filter back into Burundi in order to avoid demobilisation.

RWANDA

During the 1994 genocide, up to 800,000 Tutsis and moderate Hutus, some 14% of the population, were killed by extremist Hutu groups, including the Interahamwe and ex-FAR (see above). Far less widely known is the fact that Rwanda's third ethnic group, the marginalised and impoverished indigenous Twa people, also suffered in the genocide. In an interview with the Rwandan Hirondelle News Agency, Kalimba Zéphyrin, Director of the Twa NGO CAURWA (*Communauté des Autochtones Rwandais*) stated that there were now some 20,000 Twa left in Rwanda out of an estimated 30,000 before the 1994 genocide:[1]

391

We had 10,000 Batwa killed during the genocide. They were not killed by Batwa, but by both Hutus and Tutsis. [The Batwa] should be regarded as survivors of the genocide. To date, the government of Rwanda has taken no action to support the Batwa community.

The Rwandan government has never officially recognised the Twa's losses during the genocide and does not count them among the "survivors of genocide". "Survivors of genocide" are eligible for government funds established to assist specifically this category of people.

The fact that the Twa had no part in the politics of the genocide has led some commentators to suggest that they have a special role to play as independent witnesses in the traditional community justice system, based on so-called *gacaca* courts, set up by the government to process the 120,000 people held on genocide-related charges in Rwanda's overcrowded jails. The Twa, however, have serious concerns about the *gacaca* process fearing that, as a marginalised group, they will be vulnerable to scapegoating and false accusations. They also foresee a lack of reliable Twa witnesses to testify in trials of Twa people, because their community is so small. While the Twa say that, despite the risks to themselves, they will support *gacaca* by recounting what they have seen, they also express their fears that, should a Hutu regime ever come to replace the current Tutsi-led government, they will be acutely vulnerable to reprisals. In October 2001, some 300,000 *gacaca* judges (*inyangamugayo*) were elected by the local population at cell, sector, district and provincial level in 11,000 *gacaca* jurisdictions. A handful of Twa were amongst those elected at the lowest (cell) level. Although the numbers are very small, this is a welcome sign that the Twa are beginning to be included in Rwanda's civil society processes.

CAURWA has established high-level contacts with the ministries of Local Administration and Social Affairs, Finance, Gender and Promotion of Women, Justice, Agriculture, Land and Environment, Interior and Security, the Prime Minister's Office and the National Unity and Reconciliation Commission (URC). In August 2001, CAURWA organised a 4-day training seminar on human rights and minority rights, participatory justice (*gacaca*) and unity and reconciliation. The seminar brought together Twa community representatives from 2 provinces, staff of Rwandan Twa organisations and representatives of Rwanda's Human Rights Commission, the URC and the Supreme Court. These contacts, and the increasing coverage of Twa issues in the press, on TV and radio, are contributing to increased awareness among the public and decision-makers about Twa issues and the need for action. For example, in October 2001 Rwanda's

transitional assembly passed an anti-discrimination law against any person practising discrimination and segregation in the country. In a commentary on the new law, Vincent Biruta, Speaker of Parliament, stated that the law "provides a flexible framework that makes it possible and legal to enforce positive discrimination in favour of vulnerable groups like the Batwa, the disabled and the girl child."

CAURWA's contacts with the URC are promising. The URC is the only government body that has recognised the marginalised situation of the Twa in its official policies and programmes. It now has a special budget line for support to Twa communities. CAURWA has established a system of Twa contact persons or "*antennes*" in six of Rwanda's 12 provinces to help Twa communities engage more effectively with local authorities. As part of their work, CAURWA's *antennes* are sensitising the URC representatives in each province about Twa needs, with positive results in some areas.

The presence of the *antennes* and CAURWA's ongoing advocacy work with local authorities in over 40 districts in 8 provinces has helped Twa communities obtain farm land and clay for pottery, reclaim land from neighbours who had appropriated it, and improve their housing. This work to build capacity at community level was reinforced during 2001 by leadership training organised by CAURWA for community representatives and staff of Twa organisations, and by CAURWA's new programme of income-generating activities. The latter is providing training and inputs to 30 Twa communities (762 households) in 5 provinces to carry out farming, animal husbandry and off-farm activities such as tile-making, brick-making and sewing. Some of the communities have set up bank accounts and are using their new-found incomes to pay for the schooling of their children or to join local health insurance schemes. In December, CAURWA started a project to increase Twa potters' incomes by improving production, developing business skills and creating a Twa pottery enterprise based on Fair Trade principles.

New laws passed during 2001 requiring the re-registration of all Rwanda's NGOs prompted CAURWA to begin discussions with its member organisations about its future structure. In order to meet the registration requirements, they decided that CAURWA would become an independent NGO, and no longer a collective of Twa organisations. This process is expected to be completed in early 2002. CAURWA will maintain relationships with the other Twa organisations through partnership agreements and will continue to offer them training and other support.

The next few years will provide important advocacy opportunities for the Twa as the Rwandan government develops and implements its ambitious programme of reforms. These include the *gacaca* process and the URC, as well as the drafting of a new constitution, reform of land laws, decentralisation of government administration and implementation of a poverty reduction strategy (PRSP). The Twa organisations have started work on some of these issues. For example AIMPO (the African Indigenous and Minority Peoples Organisation) is documenting land issues in three to four Twa communities as part of its advocacy to improve Twa access to land, and is also supporting the development of Twa communities around the Volcano National Park. The ADBR (*Association pour le Développement Globale des Batwa du Rwanda)* is continuing a programme of legal support to Twa prisoners.

In September 2001, CAURWA, in collaboration with the Forest Peoples Project UK, IWGIA and the Swedish Society for Nature Conservation and funded by the UK Community Fund, hosted a regional conference to promote dialogue between African indigenous peoples and conservation bodies. [2] The aim was to explore why the new conservation principles are not working and identify measures that will result in more just and sustainable conservation practices. The conference brought together representatives of indigenous communities affected by protected areas, African conservation managers and technical staff from a wide range of protected areas, along with support organisations working with indigenous peoples in Africa. Ten case studies were presented by indigenous representatives from 7 countries.

DEMOCRATIC REPUBLIC OF CONGO (DRC)

The ongoing conflict in the DRC has caused immense hardship for the Pygmies of the Kivu region of eastern DRC. Their villages have been torched, up to 150 people have been killed, hundreds have been displaced from their homes and many are forced to act as guides by armed groups trying to locate their opponents in the forests. Despite the insecurity and difficulties caused by the ongoing conflict in the DRC, Pygmy support organisations continued to maintain contact with Pygmy communities in the east and north of the country.

AAPDMAC (*Action d'Appui pour la Protection des Droits de Minorités en Afrique Centrale*), a Pygmy support NGO based in Bukavu, investi-

gated the situation of the Mbuti Pygmies in north Kivu and the southern fringes of the Ituri forest, particularly in connection with the activities of a Thai logging company, DAR-Forest, which had been denounced by local Pygmy communities. (The Mayi-Mayi later held 26 of the company's workers hostage; this event received international news coverage). The study also investigated education and literacy activities being carried out with Pygmy communities by different church-based groups, to see which approaches were most suited to Pygmy needs.

AAPDMAC organised a workshop for representatives of Twa communities living around the Kahuzi-Biega National Park in South Kivu, so that they could begin to develop a common platform to press the Park conservation authorities to address the Twas' critical lack of land and livelihood possibilities following their forced eviction from the park in the 1970s and 80s.[3]

Some 10 Pygmy support organisations now exist in Kivu. Many of these are concerned about the Twa communities affected by the Kahuzi-Biega Park, and it is possible that these organisations will develop a coordinated strategy to tackle this issue collaboratively.

During 2001, PIDP (*Programme pour l'Intégration et le Développement des Pygmées du Kivu*) began publication of a three-monthly bulletin, *Bambuti*, reporting on its activities in the region. PIDP has begun a project to train Pygmy communities in improved pottery production and continues to support Twa communities in north and south Kivu with agricultural inputs (tools, seeds etc) and training in farming methods. The project has been re-oriented to work with Twa women's groups, who are more receptive to training and carrying out farming activities. PIDP's literacy programme has been reactivated; 53 Pygmies can now read and write. Increasing literacy of Pygmy communities is important to reduce the number of fraudulent land transactions resulting from the Pygmies' inability to read the content of the documents. As part of its support for Pygmy education, PIDP financed a Twa student from Walikale to complete a diploma in rural development in Bukavu. PIDP held its annual 'Pygmy week' in August 2001, to increase awareness of Pygmy rights and culture through public lectures and debates on international human rights instruments, Pygmy dancing and craft exhibitions, football matches and discussion of PIDP's work. As part of its human rights work, PIDP is training animators to work with communities on legal issues and produces a half-hour radio programme every week.

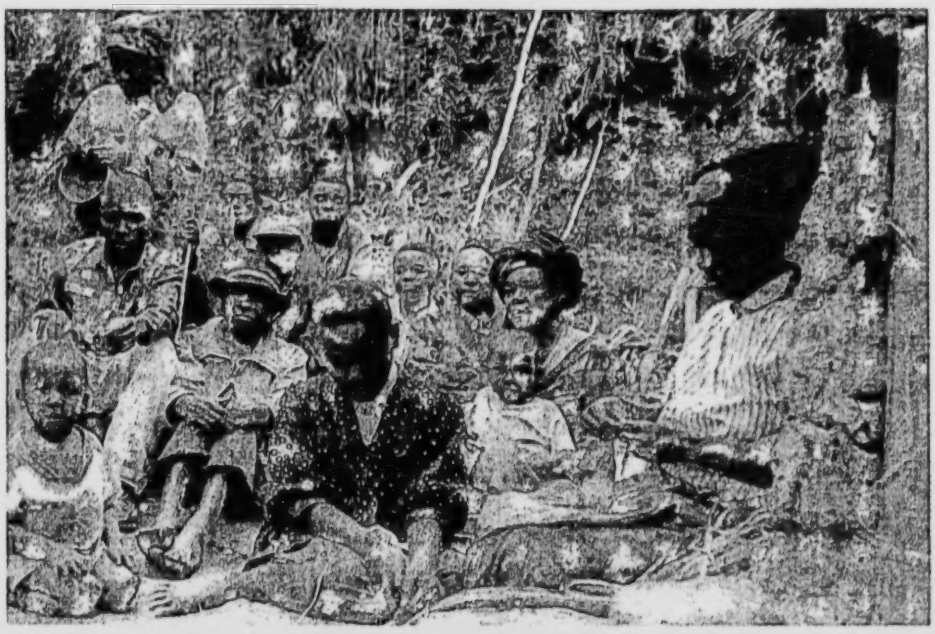
The low social status of Pygmy communities in the eyes of their Bantu neighbours means that they are least able to secure rights over lands and resources through customary tenure systems, and rights obtained can be all too easily withdrawn. For example, in the Kivu region of the DRC, the

local chiefs or Mwamis have control over land allocation in return for payments to the Mwami conferring unlimited and perpetual use rights (*kalinzi*) or temporary use rights (*bwassa*). Several cases have been reported in which Twa communities, having paid *kalinzi* for the use of agricultural land, have subsequently been evicted from their lands by other more powerful individuals. In 2001, PIDP assisted Twa families to take such a case to the Bukavu appeal court in south Kivu. Following testimony from the Mwami that the land had been given to the Twa community by his forefathers, the court judged in the Twas' favour.

UGANDA

In 1991, the Twa Pygmies of SW Uganda were forcibly evicted from their forests following the establishment of the Bwindi and Mgahinga National Parks, funded by the World Bank Global Environment Facility (GEF). The closure of the forests caused many of the Twa to move from a fairly independent existence to being landless impoverished squatters, forced to survive by working for local farmers. In 1996, following a highly critical report on the Mgahinga and Bwindi Impenetrable Forests Conservation Trust ("the Trust") established to protect the two forest parks, the Trust developed a programme to acquire land for Twa families and support their education. However, little action was taken by the Trust Batwa programme due to the unwillingness of middle management to act in favour of the Twa. The situation improved in 2000, when UOBDU (United Organisation for Batwa Development in Uganda) was created to represent the local Twa community. UOBDU pressed the Trust to speed up the distribution of land to the Twa and replace its personnel, resulting in a much more positive attitude towards the Twa.

During 2001, with the help of their support worker, Penninah Zaninka, UOBDU continued to maintain a dialogue with the Trust and its Batwa support officer. The Trust management agreed to hold quarterly formal meetings with a committee of Twa representatives from communities living around the parks. The first of these meetings was planned to be held in March 2001 but eventually took place in October 2001 due to the Trust's initial unwillingness to fund these meetings. Local people's access to the Bwindi and Mgahinga Parks



Batwa community at Bazuanza, Uganda. (Photo: Penninah Zaninka)

and the Echuya Forest is controlled by the NGO CARE and the Uganda Wildlife Trust, through multiple-use committees with whom the forest access and use agreements are negotiated.

Currently, Twa have almost no representation on the multiple-use committees and so have little possibility of negotiating use rights for their communities. UOBDU plans to tackle these issues during 2002.

Local authorities in Kisoro attempted to dispossess a Twa leader of his lands, held under customary law for many years. This was in violation of the 1995 Ugandan constitution, which gives people who have held land under customary law for 10 years or more the right to legal title. Numerous meetings at different levels of local administration have not resolved this situation, so the matter may be taken to the courts.

In 2000, seven Mbuti Pygmies from the Semliki valley in the far west of Uganda were arrested and imprisoned without trial. They were accused of helping the rebel Allied Democratic Forces (ADF), who operate from bases in the Ruwenzori Mountains and across the border in the Democratic Republic of Congo (DRC). There are only 72 Mbuti in Uganda (they are an offshoot of the much larger Mbuti population over the border in the DRC) so the loss of seven adult men, including the community leader, was a severe blow. Following protests by Survival International, the prisoners were freed and it is reported that they have set up their own association to fight for their rights.

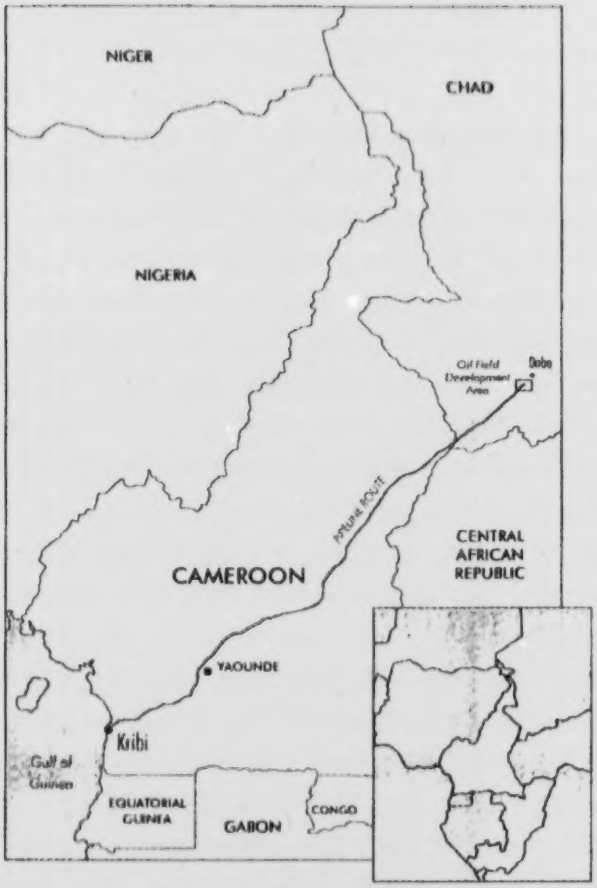
BEST COPY AVAILABLE

CAMEROON

The 4,000 or so Bagyeli "Pygmy" people live in the south-west of Cameroon. Their traditional lands will be crossed by the controversial Chad-Cameroon oil pipeline project, bringing oil from the Doba fields in Chad to the Cameroon coast at Kribi. The project, devised by a consortium of oil companies, was approved by the World Bank in June 2000. A study carried out in 2000 by Bagyeli representatives with the support of a local NGO, Planet Survey, showed that consultations carried out by the pipeline project with Bagyeli communities during the preparation of the project were insufficient, failing to inform the Bagyeli adequately about the likely consequences of the pipeline.[4] An Indigenous Peoples' Plan intended to mitigate the effects of the pipeline on the Bagyeli did not comply with the World Bank's Policy on Indigenous Peoples, and did not address the severe problems faced by the Bagyeli resulting from their marginal status within Cameroonian society.

In February and March 2001, Planet Survey carried out further investigations with the Bagyeli, in collaboration with the Forest Peoples Project, [5] revealing:

- A lack of information access throughout the project's institutional framework. Inadequate consultation, poor communication between stakeholders and a lack of informed participation by all parties, particularly the Bagyeli, had caused confusion at all levels about the construction of the pipeline and the compensation process.
- The pipeline's compensation process was deepening the inequality and conflicts between the Bagyeli and their Bantu village neighbours. The criteria for compensation had enabled the Bantu communities to capture the process through better access to information and greater political power, claiming Bagyeli lands as their own and appropriating compensation that was due to the Bagyeli. No Bagyeli had so far been compensated by the pipeline, even though it crossed their lands and had damaged forest resources.
- The pipeline project was not promoting Bagyeli participation in consultation and decision-making, and provided no mechanisms for Bagyeli to contribute to policy reforms that would address the fundamental problems of discrimination against the Bagyeli and their exclusion from civil society.



Bagyeli representatives subsequently met with World Bank officials and representatives of the Cameroon Oil Transportation Company (COTCO – responsible for building the pipeline and for designing and implementing the compensation programme and indigenous peoples' plan required under World Bank guidelines) to inform them as to how the oil pipeline was affecting their access to lands, and its actual and potential impacts on their livelihoods. They also highlighted wider issues of their marginalisation in society. The second semi-annual internal World Bank report concerning the implementation of the pipeline project, issued in September 2001, tacitly acknowledged that the pipeline would have an impact on Bagyeli Pygmies.

The route for the pipeline is now being cleared, and the community compensation programme is about to be set up by COTCO and FEDEC (the Foundation for Environment and Development). FEDEC's objectives are to provide long-term financial support for the Mbam and Djerem National Park Environmental Enhancement Project

BEST COPY AVAILABLE

Component, the Campo Ma'an National Park Environmental Enhancement Project Component and the Indigenous Peoples' Development Component. All of these projects will affect the Bagyeli, who will continue to press for recognition of their rights, assisted by local and international support agencies.

Notes and references

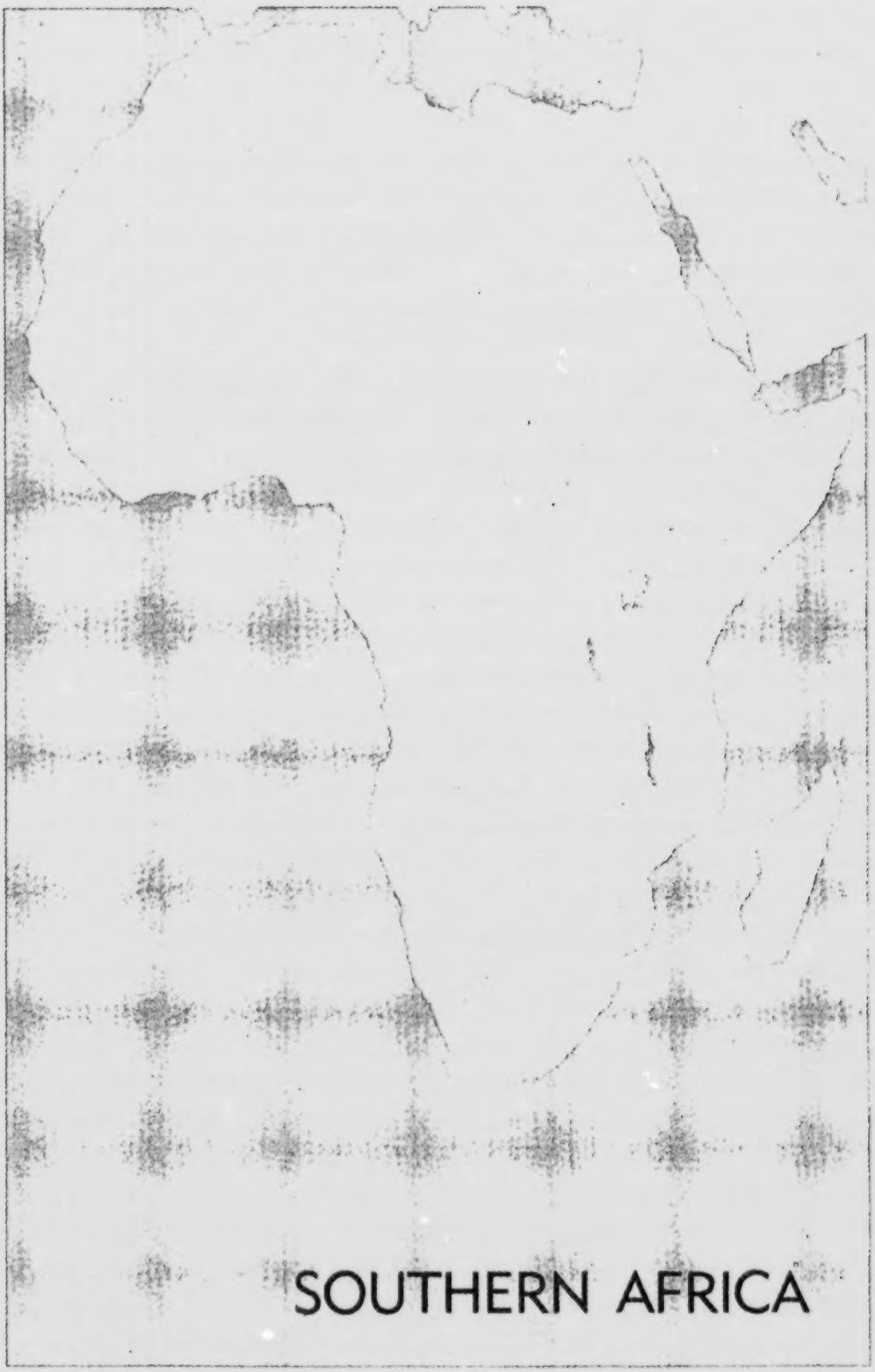
1 See also **Lewis, J & J. Knight. 2000.** *The Twa of Rwanda. Assessment of the Situation of the Twa and Promotion of Twa Rights in Post-War Rwanda.* World Rainforest Movement and IWGIA.

2 A summary of the Conference conclusions is available from the Forest Peoples Project info@fppwrm.gn.apc.org

3 See **Barume, K. 2000.** *Heading towards Extinction? Indigenous Rights in Africa: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo.* Forest Peoples Programme and IWGIA.

4 Planet Survey and CODEBABIK. 2000. Rapport de l'Enquête sur le Degré d'Implication des Peuples Autochtones dans le cycle du projet Pipeline Tchad-Cameroun. In: **Griffiths, T. and M. Colchester 2000.** *Indigenous Peoples, Forests and The World Bank: Policies and Practice.* Workshop Report, Washington D.C., 9-10 May 2000. Moreton-in-Marsh: Forest Peoples Programme.

5 **Nelson, J., J. Kenrick and D. Jackson. 2001.** *Report on a Consultation with Bagyeli Pygmy communities impacted by the Chad-Cameroon oil-pipeline project.* Forest Peoples Project Report, May 2001.



BEST COPY AVAILABLE

NAMIBIA

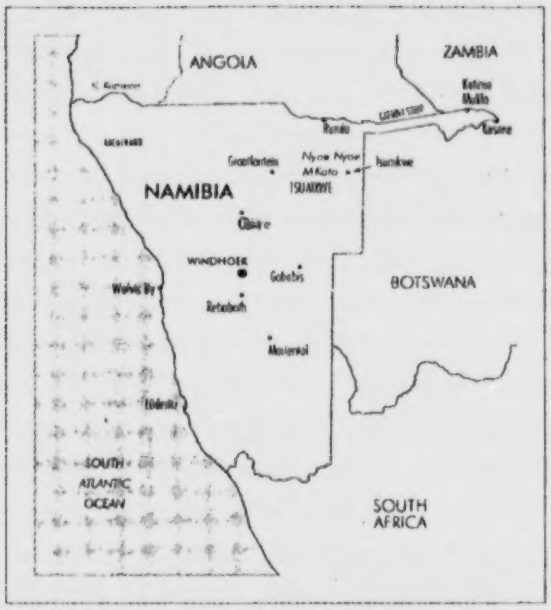
The Republic of Namibia in southern Africa has witnessed a significant expansion in conflicts that affect San and other minorities in the country. One of these conflicts is a spill-over from the on-going war in Angola between the forces of Jonas Savimbi and his UNITA organization and the government of Angola. This conflict has led to a sizable increase in the numbers of refugees coming in to Namibia. The government of Namibia has attempted to accommodate these refugees through the provision of food, services and protection and through housing over 20,000 refugees at a refugee camp at Osire in central Namibia.

The situation in the Caprivi Strip

The Caprivi Strip is a narrow strip of Namibian territory stretching some 300 kilometers east into central Africa. The Khwe San, the oldest inhabitants of the Caprivi region, live on this tense border that includes Angola, Botswana, Namibia, Zambia and a corner of Zimbabwe. The Khwe have been caught in the crossfire between four opposing forces: Jonas Savimbi's UNITA insurgents in Angola, Caprivi separatists, the Namibian Defense Forces (NDF) and the Namibian Special Security Force (SSF).

There have been alleged incidents of the indiscriminate rounding up of individuals by the government of Namibia on suspicion of their being "illegal immigrants" and deporting them without holding hearings. After an attack on the town of Katima Mulilo in East Caprivi by dissidents in August 1999, over 1,000 Khwe fled into Botswana in order to escape harassment and potential oppression by the Namibian government forces. Today, some 750 Khwe are housed at Botswana's largest refugee facility, Dukwe Refugee Camp, in the area west of Francistown and east of Nata. At this stage, many of the Khwe were attempting to repatriate to Namibia, and the United Nations High Commissioner for Refugees was attempting to determine whether it was safe for them to do so.

In the series of harassments that forced the Khwe into exile, four particular incidents stand out: first, the disappearances in August 2000 of at least 15-18 Khwe, an incident that was not reported in the Namibian media until February 2001. The whereabouts of these Khwe is still unknown. A local NGO, the Legal Assistance Centre (LAC) has



sought to obtain evidence of the missing people, to no avail.

Second, the refusal of the government of Namibia to recognize Kipi George, the popularly elected chief of the Khwe as Traditional Authority for the area. Kipi George had been an articulate spokesperson for the Khwe and had served as Chair of the Working Group of Indigenous Minorities in Southern Africa (WIMSA). The dispute over his legitimacy became moot when George died of tuberculosis in 2000. There are still questions about the legitimacy of the Khwe Traditional Authority, which the government of Namibia has as yet refused to recognize officially under the *Traditional Authorities Act* of Namibia.

Third, in June 2001, SFF and NDF members rounded up more than 80 civilians, most of them !Xun and some Hai//om, on the suspicion of being illegal aliens, at Kahenge Village, west of Rundu. Some of these people were detained, others were required to move to the Namibian government and UNHCR refugee camp at Osire, and still more were told to return to Angola even though they were not Angolan citizens.

Fourth, on July 10, 2001, a Khwe man, Hans Dikuwa, died in the custody of the Namibian Defense Forces. At first it was said by the government that he was shot while trying to escape. Subsequently, the government said that he drowned while attempting to cross the river into Angola. The circumstances of the case remain in doubt. Human rights workers have criticized the government of Namibia for not observing the Refugee Convention of the United Nations through failure to protect asylum seekers and refugees and failing to establish immigration tribunals and committees to oversee refugee and asylum seeker matters.

The refugee resettlement issue

In October 2000, the government of Namibia announced that it was planning to resettle the Osire refugees at a new location, specifically at M'Kata in what is now Tsumkwe District West, formerly West

BEST COPY AVAILABLE

Bushmanland, in north-eastern Namibia, an area dominated by San peoples. Several reasons were given for the proposed resettlement: (1) overcrowding of the Osire refugee camp, (2) the lack of sufficient land and natural resources in the present location at Osire to sustain the refugee population, (3) the desire to establish a refugee resettlement area with sufficient land to allow agricultural activities to take place and (4) the need for greater security for the refugees and the people living and working in and around the Osire refugee camp.

The majority of the refugees in the Osire camp come from Angola (over 90%). There are also refugees from over a dozen other African countries in the camp, including a fairly sizable number from central Africa (Congo, Rwanda, Burundi) and some from as far away as Somalia. The backgrounds of these refugees are diverse: they come from different settings, both rural and urban, and in the past they earned their living in a variety of ways, including agriculture, pastoralism (herding), foraging and wage labour. The Angolan refugees include people from a number of different ethnic groups such as Nganguela, Lunda, Ndembu and Ovambo (all Bantu-speaking agro-pastoral groups) and some San, mainly !Xun and Khwe, click-speaking former foraging peoples who lived in southern and south-east Angola prior to coming to Namibia.

The resettlement area

The potential resettlement area at M'Kata, in the center of Tsumkwe District West, is a remote area located some 165 km east north-east of the town of Grootfontein. Together with Tsumkwe District East, the area forms the Tsumkwe District region, whose residents numbered some 6,700 people in 2001, and reside in 60 settlements scattered across an area of 17,850 square kilometers.

The Tsumkwe District West population stands currently at around 4,500 individuals from 8 different ethnic groups. Some of the people in the district originally came from northern Namibia and southern Angola and were resettled in the area in the 1970s and 1980s during the time of the conflict between Namibian liberation forces and the South African Defense Force. The !Xun are the indigenous peoples of Tsumkwe District West. Today, the various San groups (!Xun, Vasekele, and Mpungu San) reside in 24 settlements, most of them relatively small. Some of them had individual arable agricultural plots allocated to them by the Ministry of Lands, Resettlement, and Rehabilitation on which they grow maize, beans, melons, and other crops, though crop yields are relatively low in this semiarid environment.

Most of the groups have experienced substantial social, economic and political changes over time. Some of the more important of these changes include the shift towards greater dependence on agriculture and herding, the enforcement of conservation laws that have affected their resource acquisition activities (especially hunting), the establishment of local traditional authorities (chiefs) that are recognized by the government of Namibia under the *Traditional Authorities Act*, and the setting up of locally-owned and managed community organizations that promote the interests of local people and allow for their participation in land use planning and land conservation and development efforts.

In Tsumkwe District East, there are some 2,200 people living in 35 communities scattered over an area of 9,303 sq km. The vast majority of these people are Ju|'hoansi San. In early 1998, the Ju|'hoansi established what in Namibia is known as a conservancy to oversee the wildlife resources of the region. A conservancy is a block of communal land in which people are able to gain the rights to utilize the wildlife resources and to make decisions about land use. Nyae Nyae was the first communal area conservancy in Namibia, and it has been relatively successful in terms of generating income for its members and assisting them to achieve some of their conservation and development goals.

The people of Tsumkwe District West are also engaged in the process of establishing a conservancy, the N=a Jaqna Conservancy, which they hope to have in place in early 2002. The problem in Tusmkwe District West, however, is that the potential resettlement of the refugees could well preclude the efforts to establish the conservancy, which many of the people see as key to their well-being in the future.

In the Tsumkwe District there are two government-recognized San chiefs, one who represents Tsumkwe District West, John Arnold, the !Kung Traditional Authority, and the other who represents Tsumkwe District East, Tsamkxao =Oma, the Ju|'hoansi Traditional Authority. The two San traditional authorities are also members of the Council of Traditional Elders of Namibia.

There are also a number of community-based institutions in the region, including village-level development committees, parent-teacher associations, water committees, community conservancy committees and church groups. Many of these organizations have been outspoken in their concerns relating to the refugee resettlement issue in Namibia and about the importance of having local autonomy and the right of self-determination.

Local concerns and opposition

The residents of the Tsumkwe District generally have strong views on the issue of resettlement of refugees in their area. Many people feel that the region is well-known for its unique habitats, wildlife and bird species, and culturally distinct human populations. They worry that the presence of large numbers of refugees could potentially affect the natural and social environments of the area adversely. A commonly expressed opinion about the potential movement of refugees into the area was that it would place much greater pressure on natural resources, including water, firewood and wild plant foods. A number of people said that they were worried that the water table would decline, making it more difficult for them and their livestock to survive in the M'Kata area.

Much of the opposition to the resettlement process also relates to the social and cultural impacts of the resettlement on the host population, which is an indigenous minority. The San realize that the refugees moving into the region would vastly outnumber them. There are concerns that the presence of non-San in the area will affect the degree to which San are able to participate in decision-making about their area. There is also the sense that the presence of people who have chiefs with considerable authority will serve to undermine the authority of local traditional authorities.

Another fear of the local people is that the refugees would dominate the job market and affect the incomes of local people, the majority of whom are already living below the poverty line. There are also those, admittedly a tiny minority, who believe that the presence of a refugee camp will have positive spin-off effects, such as increased employment opportunities, expanded infrastructure and larger markets for goods and services.

The removal of refugees from one place to another has costs for those individuals, not only economic costs but also physiological, psychological and socio-cultural ones. These costs range from increased competition for resources to greater socio-economic stratification and disruption of existing social networks.

Local people feel that the decision by the government of Namibia to resettle large numbers of refugees in their area without consulting them is a violation of their civil and political rights. They also feel that the presence of the refugees will impinge on their social, economic and cultural rights, including the right to adequate subsistence. Yet another concern is that the people of Tsumkwe District will have to become more dependent on safety nets provided by the government of Namibia. It is for these reasons that local people, donor agencies

and non-government organizations, including ones working directly with the refugee population at Osire, have opposed the proposed resettlement. Non-government organizations, local authorities in both the Osire and M'Kata regions, and local people have argued that the government of Namibia should carry out detailed consultation efforts prior to any decisions being made about resettlement.

Even though no resettlement has taken place, the effects of the government's announcement regarding the possible move of the Osire camp to M'Kata can already be seen. Some refugee households did not plant crops in 2001 in anticipation of the move, something that will affect their nutritional status and incomes. In M'Kata, people are experiencing feelings of anxiety about the future. Questions have been raised by local people about the effectiveness of their leaders in dealing with the government of Namibia, something that could well undermine the authority of the traditional authorities.

The Working Group of Indigenous Minorities in Southern Africa has sought to inform the people of the Tsumkwe District about some of the proposed plans. Local people in M'Kata are appreciative of these efforts. At the same time, they are hoping that WIMSA and the Legal Assistance Centre of Namibia will join the Tsumkwe District communities in an effort to head off the resettlement legally. One suggestion is that the Legal Assistance Center should take the government of Namibia to court in order to prevent the resettlement from occurring. Another suggestion is that local people mount passive resistance to the resettlement plans.

Rather than resettling people in M'Kata, refugees and local people in the M'Kata area note, it would be more beneficial in the long run if Namibia established a comprehensive development program in both the Osire and M'Kata areas. This development program, which should be aimed at promoting the self-sufficiency of local people and conservation of the environment, should be done in such a way that it has extensive local participation in planning and implementation. If social justice is to be achieved in Namibia, all people, both citizens and non-citizens, will need to be able to enjoy the fruits of development and protection of their human rights.

Meeting the challenges of new values

Beside the Traditional Authorities of Tsumkwe District West and East, there are few opportunities in Namibia where San can play important roles in government decision-making and management.

The efforts of the Working Group of Indigenous Minorities in Southern Africa and the Center for Applied Social Sciences (CASS) of the University of Namibia have been important when it comes to the recognition of San traditional authorities in Namibia. A major contribution of WIMSA and First Peoples Worldwide was the production in 2001 of a *Traditional Authorities Handbook* that explains to the San of Namibia some of the concepts and rules relating to the *Traditional Authorities Act*. Particular emphasis in the handbook is placed on customary law or traditional laws, those laws that govern such issues as marriage, divorce, inheritance, land allocation and the use of natural resources.

There have been some changes over time within San groups in leadership and authority roles and in the activities of community members. For instance, it was the Ju | 'hoan *n!ore kxaosi*, the oldest men or women core-group siblings in whom stewardship of resource and habitation areas were vested, who formerly maintained coordinating relationships with other n!ore kxaosi.. Some of their activities involved balancing the giving — and strategically withholding—of key environmental accesses in traditional territories *(n!oresi)*. With independence in Namibia, both national and developmental expectations were that these leadership and resource management attitudes would vanish overnight and give way to smoothly functioning "democratic" structures and attitudes of commitment to the health of the region as a whole. Nowadays, it is the Traditional Authorities and members of the conservancy council who tend to make some of the decisions about land and natural resource management.

New Ju | 'hoan leaders have been expected to transcend both the long-tenured social attitudes of their relatives toward non-self-aggrandizement and their own traditional altruism patterns as they forged new public selves and organizational functions. Individuals have suffered mightily in this process. As a result, Ju | 'hoan communities' early faith in the new leaders was steadily eroded on seeing the widening gap between old and new social values. Inter-generational conflict and inter-community conflict is on the rise, and the challenge facing the Ju | 'hoansi is how to manage these conflicts and at the same time retain their cherished customs, traditions and values.

Part of the problem of the Ju | 'hoansi revolves around competition over resources. Some of the resources include wildlife and tourism opportunities that are now available through the leasing process related to the Nyae Nyae Conservancy. In 2001, the Nyae Nyae Conservancy advertised for joint ventures, and 11 different firms applied. The Nyae Nyae Conservancy was able to obtain N $100,000 per

annum for the right to bring tourists in to engage in safari hunting in their area. Some of the funds were used to support the management and administrative costs of the conservancy, and household dividends were paid to the people of Nyae Nyae.

The Nyae Nyae Conservancy has also been involved in work with film companies that pay a royalty to the NNC for the privilege of working in the Nyae Nyae area. The challenge in early 2002 related to how the management of the Nyae Nyae Conservancy was going to distribute the royalties from these activities, that is, whether funds would be given only to those communities that were most involved in the tourism and film-making activities, or whether the entire membership of the conservancy would receive a share.

It is these kinds of complex issues that are facing many indigenous peoples around the world: how best to handle the need to ensure equity, transparency and accountability while at the same time providing sufficient resources to sustain the operations of institutions that represent the indigenous people.

Notes and references

1 **Suzman, James. 2001**. *An Assessment of the Status of the San in Namibia*. Windhoek, Namibia: Legal Assistance Center.

2 **Biesele, Megan and Robert K. Hitchcock. 2000**. "The Ju/'hoansi San Under Two States: Impacts of the South West African Administration and the Government of the Republic of Namibia". In *Hunters and Gatherers in the Modern World: Conflict, Resistance, and Self-Determination*, Peter P. Schweitzer, Megan Biesele, and Robert K. Hitchcock, eds. Pp. 305-326. New York and Oxford: Berghahn Books.

BOTSWANA

The Republic of Botswana, a country the size of France that lies in the centre of the Southern African region, supports the largest number of San, the "first peoples" of the Kalahari Desert and adjacent areas. The San, who are sometimes called Basarwa in Botswana and Bushmen in scientific and popular literature and films, have been

estimated to number 47,675 in Botswana. This is 54 per cent of the total population of San, who currently reside in 6 of the nation-states of Southern Africa.[1]

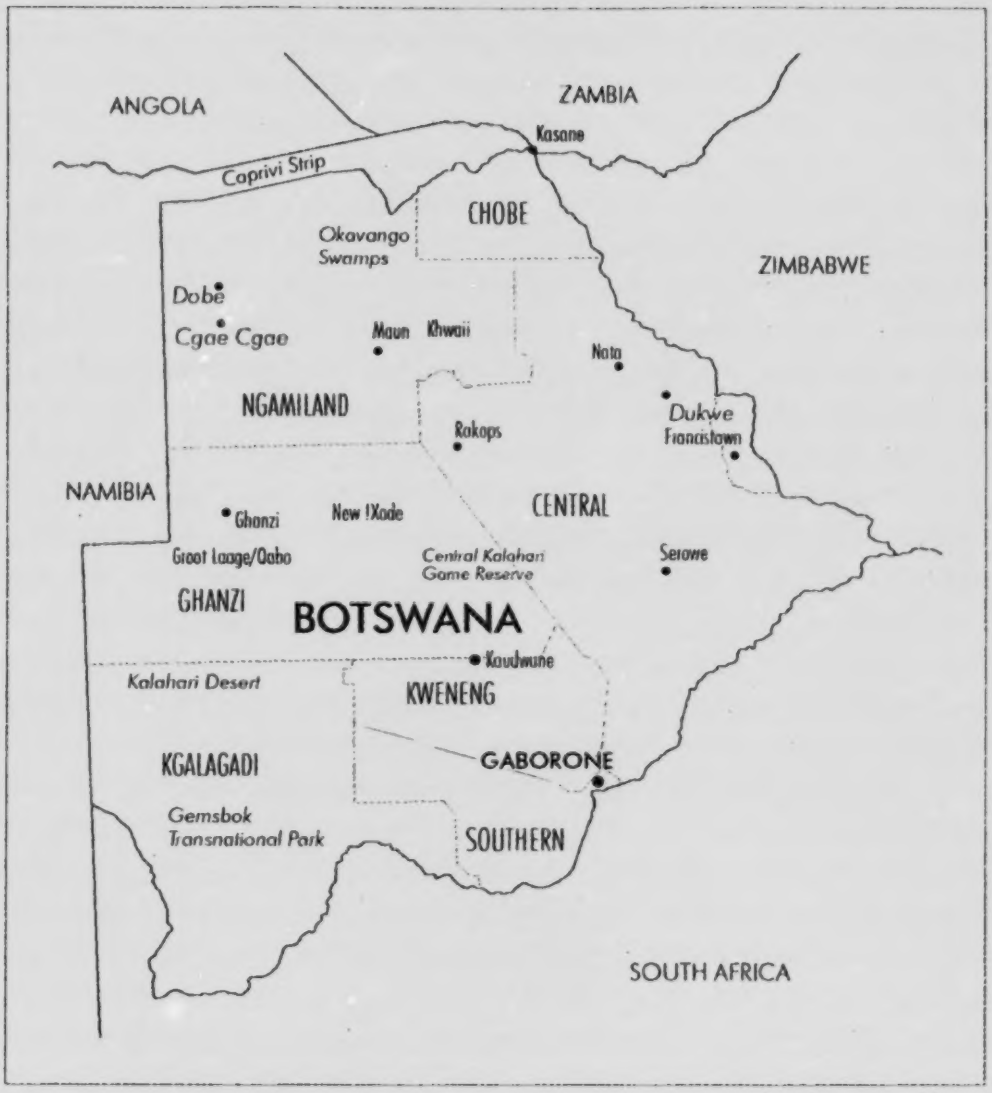
Unlike South Africa, which officially recognizes the existence of indigenous peoples within its borders, Botswana continues to deny that the San should be considered to be more indigenous than any other groups in the country. The Botswana government sees the San and some of their neighbors as Remote Area Dwellers – a broad category of persons who reside in remote rural areas and who are therefore less advantaged than other groups in terms of access to services, development assistance and employment opportunities. From the perspective of the Botswana government, the San are but one of a number of minorities who, like the Herero, Bakgalagadi, Kalanga, Mbukushu and Yeei, have the same rights as other citizens under the Constitution.

The San, for their part, see themselves as indigenous peoples, *first peoples*, who lack the kinds of rights that others have in Botswana. Indeed, in 1978, the Litigation Consultant to the Attorney General's Chambers of Botswana ruled that the San have no rights of any kind except rights to hunting.[2] This is why the period from the late 1970s to the present in Botswana has been characterized by the efforts of San and their supporters, including non-government organizations and indigenous peoples' rights advocacy groups, (1) to gain legal (*de jure*) land rights, (2) to protect their rights to engage in subsistence hunting and gathering, (3) to have their languages recognized and taught in schools and (4) to have equitable opportunities for development assistance in places that they themselves choose to live and work.[3]

The Central Kalahari Game Reserve issue

Far and away the most important issue facing the San of Botswana in 2001-2002 was the decision by the Botswana government to stop all services in the Central Kalahari Game Reserve (CKGR) and to resettle the remaining residents outside of the reserve. This multifaceted human rights issue, which had been debated in Botswana since the mid-1980s, finally came to a head toward the end of 2001, when Botswana's Ministry of Local Government decreed that all services (water, health and food distribution) would be stopped as of 31 January, 2002.

The CKGR was originally set aside for indigenous Kalahari inhabitants (mainly San and Bakgalagadi), and people were supposed to be able to continue to utilize natural resources (game and wild plant



foods and medicines). In 1997, the Botswana government, ostensibly to promote conservation, high-end tourism and, according to some observers, the exploitation of diamonds and other minerals, decided to remove some 1,100 San and Bakgalagdi from the reserve and put them in dysfunctional camps on the fringes of their former ancestral area.

The remaining 100-150 families have since then struggled for their right to continue to live within the reserve. With the help of a Negotiating Team constituted in 1997, which consists of representatives of CKGR communities, San organizations such as First People of the Kalahari, (FPK), the Working Group on Indigenous Minorities in Southern Africa – Botswana (WIMSA), the Botswana Christian Council (BCC), DITSHWANELO (the Botswana Center for Human Rights)

BEST COPY AVAILABLE

and a legal advisor, these families have made sustained efforts to engage in negotiations with the Botswana government.

During the first half of 2001, several meetings were held between the Negotiating Team and the Department of Wildlife and National Parks (DWNP) and there were hopes that the government would endorse the third draft of the *Management Plan for the Central Kalahari Game Reserve* that had been drawn up by the DWNP. This plan incorporated the findings of community mapping carried out in the CKGR with the support of FPK and international indigenous peoples' rights advocacy organizations, notably the Global Ministries, The Netherlands, and the International Work Group for Indigenous Affairs (IWGIA).

In August, however, statements made by the Assistant Minister of Local Government during a visit to the CKGR to the effect that all services to CKGR residents would be stopped in early 2002 were a bad omen – even though they were later disavowed by the Minister herself.

In September, the international media announced that a substantial amount of land in the CKGR (71%) had been restored to the San by the Botswana government. Alas, the announcement was, in fact, premature and unfounded. In mid-October, Aron Johannes, a San man working for WIMSA, reported that water deliveries to people in the central Kalahari had been discontinued and that people were being forced out of the reserve due to lack of water. At the same time, the subsistence hunting licenses – the Special Game Licenses, SGLs – held by some of the CKGR residents expired and were not renewed.

A week later, the President of Botswana declared in his State of the Nation Address that a decision to cut off services (e.g. water provision food rations to registered destitute and orphans, and visits by health teams) by early 2002 had been taken.

The vast majority of the residents of the Central Kalahari Game Reserve, who reportedly numbered 589 in August, 2001 and who lived in half a dozen small communities scattered across an area of over 52,000 sq km, did not want to leave the Central Kalahari. Instead, they urged the Negotiating Team to attempt once more to come to an agreement with the Botswana government to allow them to retain and exercise their land and resource rights in the Central Kalahari Game Reserve.

Botswana government representatives, including the Minister of Local Government, Margaret Nasha, and the Vice President, Ian Khama, met with the Negotiating Team in November and December 2001. These discussions did not, however, lead to a change in the government's position regarding the Central Kalahari Game Reserve. The government maintained that the resettlement of the people of the Central Kalahari in areas outside of the reserve would facilitate the delivery of social services

and development assistance and would allow them to integrate more fully into mainstream Botswana society. The San and Bakgalagadi residents of the Central Kalahari, on the other hand, said that they wanted to continue to reside in their ancestral territories.

Minister Nasha said in a letter to the head of DITSHWANELO, the Botswana Centre for Human Rights, "We as Government simply believe that it is totally unfair to leave a portion of our citizens undeveloped under the pretext that we are allowing them to practice their culture."[4] The San, on the other hand, said that they wanted to be able to, as they put it, protect their cultural traditions and at the same time earn their livelihoods in ways that they themselves chose.

The provision of water and other services were stopped at the end of January 2002. In February, trucks were sent in to the reserve and the people in the various communities were told to load their belongings onto them, so they could be moved to two settlements outside of the reserve, one at New !Xade in Ghanzi District to the west of the reserve and the other at Kaudwane in Kweneng District to the south-east of the reserve. By late February 2002, there were only 67 people left in the reserve, and even they were making preparations to leave.

On 10 April, 2002, the lawyers for the Negotiating Team filed a "founding affidavit" at Botswana's High Court.[5] The affidavit called for the restoration of services terminated on 31 January, 2002, and for the restoration of land possession to the residents of the Central Kalahari.

The case was dismissed on Friday, April 26, 2002 by the judge of the High Court, who ruled that the first applicant, Roy Sesana, could not, in terms of the law, bring a case of this nature to court, as "he was not a resident of the Central Kalahari Game Reserve". The case was also dismissed on the basis of technicalities. The Judge of the High Court went further, saying that, "the contents of Roy Sesana's affidavit were too sophisticated and complex to have been within the knowledge of an illiterate person." As DITSHWANELO pointed out in a press release on 2 May, 2002, Mr. Sesana was, in fact, a resident of Molapo in the Central Kalahari Game Reserve, and that his lack of literacy should in no way be taken to mean a lack of knowledge. The Negotiating Team is planning an appeal against the High Court's decision.

It is clear from the ways in which the case was handled by the High Court that the Botswana government is bound and determined not to recognize the rights of the San and Bakgalagadi of the Central Kalahari Game Reserve. It is also clear that the government is upset with the efforts of the Negotiating Team and its lawyers and the various San and international indigenous peoples' rights groups for their roles in challenging Botswana's reputation as a model of democracy

and human rights, to the point that some of the people involved in the Central Kalahari case were being followed by the Botswana police and charges against them for operating "illegal communication devices" (i.e. a radio) were being considered in May 2002.

Subsistence hunting rights

The debates over the issue of treatment of alleged 'poachers' by Botswana government officials, including game scouts from the Department of Wildlife and National Parks and police officers, continued in 2001 (see *The Indigenous World 2000-2001*).

In March 2001, 5 hunters from Kaudwane were arrested and allegedly beaten by game scouts for hunting in the Central Kalahari Game Reserve. The case is reminiscent of many other cases in the past. The problem with these cases does not lie solely in the fact that people suspected of violating hunting laws are mistreated physically and mentally by officials of the state of Botswana but that people are arrested and detained in spite of the fact that they have been hunting legally. From the perspective of the people involved, the actions of government officials are not justified on legal grounds and are tantamount to harassment and intimidation of people for engaging in practices that they consider central to their culture. As one San put it in 2001, "Hunting is our heritage". San advocacy groups hold that the failure to allow people to continue to obtain wild animal resources, in spite of legislation allowing them to do so, is a violation of the economic, social and cultural rights of the San.

The government of Botswana has not investigated these incidents thoroughly, nor have any of the officers involved in these events been charged with any crimes. The concern of San is that the violation of individual liberties and security of the person will continue unless some effort is made to investigate cases like this one and to bring individuals responsible for wrong-doing to justice. As one San put it, "No longer should Botswana Government officials be allowed to act with impunity in violating our rights."

Community trusts under threat

The decision by the Ministry of Local Government and the Ministry of Lands, Housing and Environment in January, 2000, regarding community trusts in Botswana has yet to be rescinded formally. This

decision held that communities would no longer have the right to make their own decisions on natural resources or to retain their own funds, the benefits of the resources instead being "a national resource, like diamonds".[5] The decision affects the 50 or so community-based natural resource management projects in Botswana, some of which represent constituents who are San. Some community trusts, such as Cgae Cgae (/Xai/Xai) in Ngamiland, stood to make as much as 1 million Pula (a Pula is worth about US $0.15) annually on safari hunting and tourism activities.

In spite of the constraints posed by the uncertainty surrounding the Botswana government's decisions on community trusts, the number of local communities that are interested in becoming involved in natural resource management and utilization is on the up-swing. With the assistance of such San organizations as TOCADI, the Trust for Okavango Cultural and Development Initiatives, communities are engaged in organizing themselves as 'representative and accountable management groups' and are attempting to gain official registration with the government of Botswana as legal entities. The communities can do this under national legislation relating to community-based natural resource management activities in areas that are zoned as Community-Controlled Hunting Areas (CCHAs).

Some San groups are in the process of attempting to obtain land rights from Government. Regularization of land includes establishing areas that are recognized legally. Careful surveys must be done of areas that take into account both *de facto* (customary) and *de jure* (legal) claims to land. These surveys include (1) interviews with local people, (2) assessments of archive materials, including aerial photos and maps and (3) evaluations of records in Land Boards and the files of government land ministries (e.g. the Department of Surveys and Lands in the Ministry of Lands, Housing and Environment) and the Attorney General's Chambers and in the local Land Board and the Sub-Land Board.

In some areas of rural Botswana, such as the Dobe area (Controlled Hunting Area NG 3, 5,760 sq km in size) and Ncwaagom (Controlled Hunting Areas NG 10 and 11, 800 sq km), community mapping efforts have been undertaken with the assistance of a consultant, Arthur Albertson. Albertson has worked with local San people in the mapping, which involves the use of Geographic Positioning Systems (GPS) instruments, aerial photographs and field surveys. The impacts of these efforts have been profound. In the case of the Dobe area of western Ngamiland, which has 8 *n!oresi* (territories) ranging in size from 40 sq km (!'Arin//ao) to 244 sq km (G/hii'ahn), communities

have been able to obtain water rights from the North West District Council and Tawana Land Board and have drilled several successful wells. In the case of Ncgwaagom, Bugakwe, G//anikwe, Yeei and Mbukushu, communities have collaborated on the planning for a cultural trail and tourism program.

There are now community trusts in Ngamiland at Khwaai just north of Moremi Game Reserve (NG 18 and NG 19, 1,195 sq km), Mababe (NG 41, 2,045 sq km), /Xai/Xai (NG 4, 9,293 sq km) and at Groot Laage and Qabo in Ghanzi District (GH 1, 3908 sq km). The planning and implementation of the community trusts has not always been easy. Sometimes there are differences of opinion among community members as to who has what rights over specific areas in a region. There are also occasional inter-ethnic disagreements, as was the case, for example, at Dobe between the Ju|'hoansi and some Herero. As the San organizations have learned, careful negotiations and conflict management techniques are crucial in such situations. Care must be taken to ensure that more powerful groups do not dominate those that are less powerful and influential.

Assessments of these trusts by San organizations and researchers show that, for them to be successful, they must form workable local institutions and they must obtain secure rights over their areas. Attention must be paid both to conservation and development issues, and the state of the resource base must be monitored carefully. Crucial to the success of these projects is full participation of local people in planning and decision-making. It has been found that the community trusts work better if there is openness and transparency and if there is a fair distribution of benefits. It is hoped that the Botswana government will learn some of the same valuable lessons as the San communities and organizations have learned about the importance of promoting not only civil and political rights but also social, economic, cultural and planetary (environmental) rights.

Notes and references

1 **Suzman, James, (ed.). 2001.** *An Introduction to the Regional Assessment of the Status of the San in Southern Africa.* Windhoek, Namibia: Legal Assistance Centre. Page 6, Table 1.

2 **D. Will,** "Opinion in Re: Common Law Leases of Tribal Land", Ministry of Local Government and Lands file 2/12, 23 January 1978.

3 **Cassidy, Lin, Ken Good, Isaac Mazonde, and Roberta Rivers. 2001.** *An Assessment of the Status of the San in Botswana.* Windhoek, Namibia: Legal

Assistance Centre. **Saugestad, Sidsel. 2001.** *The Inconvenient Indigenous: Remote Area Development in Botswana, Donor Assistance, and the First People of the Kalahari.* Uppsala, Sweden: The Nordic Africa Institute.

4 Letter to Alice Mogwe from Minister of Local Government, Margaret Nasha, 7 January, 2002, CLG.1488 XIV [145].

5 *Roy Sesana, First Applicant, Keiwa Setlhobogwa and 241 Others, Second and further Applicants, versus the Attorney General in his capacity as a recognized agent of the Government of the Republic of Botswana, Respondent.*

6 **Ministry of Local Government. 2000.** *Management of Funds Realized from the Community Based Natural Resources.* Savingram LG/3/6/2/1 IV (46), 30 January, 2001. Gaborone, Botswana: Ministry of Local Government.

SOUTH AFRICA

Over the last year, significant progress has been made in advancing the struggle of indigenous peoples' rights in South Africa. The Khoi-San peoples, through their own concerted efforts, were responsible for putting their case firmly on the national agenda. This happened despite other major issues that dominated the national agenda, *inter alia* the presidential elections in Zimbabwe, the continuing Aids pandemic controversy and the impact of the worsening situation of the South African currency. Allegations of illegal foreign exchange transactions prompted the government to appoint the Myburgh Commission of Inquiry to investigate the deteriorating economic situation.

Another major focus of the South African government's actions was the attention afforded to the New Partnership for Africa's Development (Nepad). Nepad, as a program, is intended to kick-start economic development in Africa in order to alleviate poverty and ensure sustainable development throughout the continent. This development has dovetailed into the United Nations World Summit for Sustainable Development (WSSD), to be held in Johannesburg in August and September 2002. Ironically, the Khoi-San peoples, as First Indigenous Peoples, had to struggle to gain recognition from among South Africa's civil society groups in order to be represented at the WSSD. This is in spite of the fact that the Khoi-San peoples are hosting a pre-summit conference for all indigenous peoples of the world in the run-up to the WSSD.

Policy situation

The policy situation for indigenous peoples in South Africa remained unchanged, as reported last year (see *The Indigenous World 2000-2001*): Different government departments appeared to be more or less helpful but with no coherent policy guidance or political commitment from the Cabinet or the Office of the Presidency. Meanwhile, the country's indigenous peoples, and the South African nation at large, are still awaiting the official release of the Human Rights Commission's research on Indigenous People's Rights. Likewise, a set of reports commissioned by the Department of Provincial and Local Government (DPLG), formerly the Department of Constitutional Development and Provincial Affairs, pertaining to the constitutional accommodation of Khoi-San communities in South Africa had yet to be released at the time of writing this report. The departure of key officials in certain government departments has also seemingly influenced progress.

The activities of the government-initiated National Khoi-San Council

Partly due to a prolonged process of reorganizing and reprioritizing the bureaucratic system of government after Mr Mbeki assumed the Presidency from Mr Mandela, progress on Constitutional Affairs affecting the First Indigenous Peoples of South Africa came to a virtual standstill in 2001. *The Indigenous World 2000-2001's* report correctly anticipated that the shift of the indigenous portfolio to the new DPLG instead of the Department of Justice would contribute to its "decreased importance and little hope that major policy advice would be forthcoming". This uncertainty, at best, has caused unease among the different Khoi-San leaders.

Implementation of basic language rights

Although the South African government is, in terms of the Constitution, in favour of the development of the Khoekhoe and San languages and the implementation of mother-tongue education projects, it has not yet made any significant state finances available in this regard. Despite this, there is a growing attempt by Khoi-San peoples to promote their language, especially through the spoken word in, particularly, the Northern Cape and Western Cape Provinces.

Land restitution

No significant change took place in the year under review. The restoration of land rights for Khoi-San peoples remains a highly emotive issue and much still needs to be done to undo the dispossession they have had to endure from 1652 to the present day.

Khoi-San unity established

In some respects, the year 2001 marked a defining moment in the struggle of Khoi-San peoples in South Africa. For the first time in modern history, all the Khoi-San peoples of South Africa united around a single common objective, namely that of holding a national consultative conference. Over 400 delegates of the San, representing the Khomani, !Xu and the Khwe as well as all Khoekhoen, representing the Namas, Griquas, Koranas and groupings from the Western and Eastern Cape, joined forces in a landmark event in March / April in the town of Oudtshoorn. Of great significance was the fact that the Deputy President of the Republic of South Africa, Mr Jacob Zuma, opened the conference on behalf of the Presidency, as President Thabo Mbeki was abroad on an official state visit.

The National Khoi-San Oorlegplegende Konferensie (NKOK), also known as the National Khoi-San Consultative Conference, was structured around more than 30 national Khoi-San affiliated groups. The duly elected 20-person NKOK Council on which San and Khoekhoe peoples are represented, faced a daunting task in its first year of existence. Lack of funding and capacity made execution of the Council's mandate, given to it by the Conference delegates at the Oudtshoorn Conference, extremely challenging.

In some respects, encouraging progress was nevertheless made in order to realize the resolutions unanimously adopted there. The formation of the NKOK heralds a new beginning for indigenous peoples in South Africa indeed because a basis for unity of purpose has been established. A most daunting challenge is to cement this dramatic development and the new-found unity among indigenous Khoi-San peoples, as San peoples' organizations had hitherto seemingly been regarded as the only representatives of indigenous peoples in South Africa. Progress in creating an awareness of identity among Khoi-San descendants who, under apartheid, were classified as coloureds has also markedly been raised. Although official statistics are not available, there seems to be an increase in

the number of people identifying with their forgotten and suppressed heritage. This augurs well for indigenous peoples and the struggle to restore their rights.

An interesting development is the phenomenon that it seems no longer to be only impoverished rural people who are reclaiming their Khoi-San identity. Highly educated and prominent members of the community are, albeit not publicly, also starting to search for their roots. Both in public and private debates, there is a growing interest in - and publicity around - Khoi-San culture and heritage nationally, not only among Khoi-San descendants but also among other cultural groups. The interest among white South Africans appears, however, to stem largely from a commercial and tourism interest. Khoi-San rock art, traditional dance and heritage sites are of growing interest and offer something uniquely new to both local and international tourists. Such sites and practices present a real possibility for the formation of public private partnerships between Khoi-San peoples, government institutions and the private sector in order to develop them in the interest of the entire nation.

The next NKOK Conference is planned for the third quarter of 2003, to be held at Springbok, Namaqualand, when the executive must report to the conference on the implementation of the resolutions taken at the Oudtshoorn Conference.

Poverty alleviation

The national government has declared poverty eradication to be one of its main objectives. This was made tangible in the Minister of Finance's budget over the last two years when several billion Rand were allocated for such programs. The respective government departments are responsible for implementing these programs and allocating funds. The Department of Arts, Culture, Science and Technology (DACST) earmarked funds for Khoi-San poverty alleviation in the field of cultural industries. A feasibility study, conducted by the Institute for Historical Research (IHR) at the University of the Western Cape, subsequently made recommendations to DACST. Government approved these recommendations and the available funds were allocated to Khoi-San peoples in different provinces of South Africa, including the Northern Cape and Northwest Province. The Khoi-San peoples themselves are running these projects in partnership with provincial and local government structures as well as parastatals, which have the required expertise.

The National Khoi-San Legacy Project

Another poverty alleviation project involving Khoi-San peoples is the government-initiated Legacy Project. Nine different projects have been identified by the Cabinet to depict South Africa's past, including the Nelson Mandela Museum Legacy Project and the Khoi-San Legacy Project. The South African Heritage Resources Agency (SAHRA) was mandated to oversee the project. SAHRA, in turn, commissioned the IHR to take the project from the stage of conceptualization to implementation. A series of community workshops were conducted to consult with Khoi-San peoples' representatives. This was done so that the Khoi-San peoples are effectively and meaningfully consulted in the process as well as able to take on ownership of their culture. A number of sites were identified and are in the process of being developed over the next few years.

The return of the remains of Sarah Baartmann

A special category is afforded to this important issue. On Friday 3 May 2002, the remains of Sarah Baartmann, who left the country of her birth nearly two hundred years ago under duress and was never buried after her death, were returned to South Africa from France having been kept in a Paris museum all these years. The French government finally succumbed to lobbying and advocacy from both the South African government as well as Khoi-San descendants to return the remains. A government-led five-person delegation was in Paris for the official ceremony for handing over of the remains, which will now be buried at a special ceremony later in 2002. Sarah Baartmann's final resting place will be decided upon by all relevant stakeholders. This symbol of the oppression Khoi-San peoples had to endure has become a pivotal rallying point in the modern-day struggle for Khoi-San women, in particular, and all Khoi-San peoples in general. Meanwhile, a Khoi-San female academic has been appointed by the University of the Western Cape to co-ordinate an international partnership research project on all issues pertaining to the return of the remains of Sarah Baartmann.

In conclusion

There remains much hard work to be done in order to overcome the major challenges and obstacles facing the indigenous peoples of South

Africa. Their determination and will, together with the support of international structures like the United Nations and other sympathetic institutions, will galvanize greater enthusiasm to ultimately succeed.

PART II

INDIGENOUS RIGHTS

BEST COPY AVAILABLE

7TH SESSION OF THE UNITED NATIONS WORKING GROUP ON THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The seventh session of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples (WG-DDIP) was held from 28 January to 8 February 2002.[1] It was originally scheduled, as in previous years, for October-November 2001 but was postponed. At the opening session of the WG-DDIP, Mr. Luis-Enrique Chávez, a diplomat from Peru, was re-elected as the Chairperson-Rapporteur for the third consecutive term. Previously, Ambassador Jose Urrutia, former ambassador of Peru to the UN in Geneva, held this position for the first four sessions of the WG-DDIP from 1995-98. However, Mr. Chávez was recalled to Lima urgently at the end of the first week and, after some debate and discussion, Mr. José Valencia (Ecuador) was elected as acting vice-chairperson for the rest of the session.

After consultations with governments and indigenous peoples, the following work plan was agreed upon:

> *General discussions on participation and procedure; and, at the request of the indigenous peoples, collective rights, and land, territories and natural resources;*
>
> *Specific discussions on Article 13, pending from the last session; and Articles 6 to 11. (However, only articles 6, 9 and 10 were discussed in detail. Articles 7,8 and 11 will be discussed at the 8th session of the WG-DDIP.)*

As in previous sessions, the meetings alternated between formal and informal sessions, informal for generate debate and discussion, and formal when recording any consensus. All participants, governments and indigenous delegates alike, were able to take the floor and speak under each agenda item, briefly and to the point. The Chairperson clarified that the main aim of the discussions was to have an exchange of views in order to identify, as concretely as possible, the problems some governments have with specific provisions or principles in the Draft Declaration, so as to make it easier to narrow down the differences and work towards a consensus approach. Once consensus was reached, the Chairperson would reconvene a formal session to make sure this was recorded in the minutes of the meeting.

General discussions

It is difficult to include all the questions and issues raised or to do justice to the richness of the debate. This is merely an attempt to provide an overview of the discussions that took place at the 7th session of the Working Group on the Draft Declaration in order to enable indigenous peoples and others to understand what are the main issues at stake, and how the discussion is evolving.

Participation and procedure

The second day of the WG-DDIP meeting concentrated on procedural issues, focused on:

Alternative methods: There was concern at the slow progress of the working group, given that only two more years remained before the end of the Decade in 2004. Alternative working methods were proposed, including:

> *(i) The establishment of a Bureau by the Government of Mexico, to be composed of the chairperson, 4 regional vice-chairpersons and two indigenous coordinators, to engage in consultations during the working group sessions, as well as between sessions. This proposal did not receive support from other governments who believed it might add another layer (Australia), and therefore make it more cumbersome (Norway). It was also pointed out that it would be difficult to include indigenous representatives as only governments could be part of the Commission on Human Rights' bodies (New Zealand). Indigenous peoples were generally more favourable but asked for more information on its practical implications;*
>
> *(ii) "Friends of the Chair" by Canada, whereby a group of government and indigenous peoples' representatives would be appointed to assist the Chairperson during the sessions, a technique used earlier but discontinued. Although this received some support, (New Zealand and Norway), there was no consensus on either alternative.*

However, the Chairperson-Rapporteur identified the lack of political will on the part of governments to be one of the main reasons for the slow progress of the working group, rather than any working methodology and so the working group continued with its current methods.

Government inter-sessional consultations: In October 2001, a government meeting was organized in Geneva, at the initiative of the Government of Canada. The objective was for governments to meet together and prepare for the WG-DDIP sessions. During this meeting, proposals for an alternative text to the Declaration were prepared, copies of which were available at the meeting (referred to as a "non-paper" in UN language since they had not been formally presented to the Working Group). The United States Government did not participate in the October meeting, and thus proposed many changes during the WG-DDIP sessions to the governmental discussion papers. Indigenous representatives criticised the October meeting for its lack of transparency, and as being contrary to the principles of equality and non-discrimination. Canada explained that the meeting had been held in good faith and as a way of moving the process forward by already having proposals for consideration at the working group session.

Essential Criteria: Another issue that is becoming increasingly urgent for indigenous peoples to address is the question of whether to engage in a process of re-drafting or to continue to defend the Draft Declaration as originally drafted. At this session, this was question was brought to the fore with the non-paper process.

Very few governments have declared that they can adopt the Draft Declaration as adopted by the Sub-Commission, two of these being Guatemala and, more recently, Mexico as the result of a national consultation process. Many have also stated that they can adopt some articles as currently worded. However, the majority are reluctant to agree the adoption of the entire text of the Draft Declaration as originally drafted, and have concerns or reservations with one or more of its provisions or concepts. With each session of the WG-DDIP, governments introduce more and more alternative language for discussion at the meetings, with brackets indicating where they do not agree. Indigenous peoples are consistent in their support for the adoption of the Sub Commission text, and see any attempts at re-drafting as futile and frustrating, bearing in mind that the same governments actively participated in the preparation of the original text. However, faced with the political and practical implications of the current situation, many indigenous peoples' organizations are seriously concerned as to what measures to take to ensure that the final Declaration, when adopted, will be a strong instrument and will protect their rights and interests as distinct peoples. Mindful that any agreement to engage in re-drafting may lead to amendments and/or alterations resulting

in a weakening of the text, indigenous peoples have been referring to the following criteria as essential:

> *The Draft Declaration must be approached on the basis of a very high presumption of the integrity of the existing text. In order to rebut this presumption, any proposal must satisfy the following criteria:*
>
> *1. It must be reasonable.*
> *2. It must be necessary.*
> *3. It must improve and strengthen the existing text.*
>
> *In addition, any proposal must be consistent with the fundamental principles of:*
>
> 1. *Equality.*
> 2. *Non-discrimination.*
> 3. *The prohibition of Racial Discrimination.*[2]

This was first introduced by the Aboriginal and Torres Strait Islander Commissioner in 1998, and further developed by the Maori Legal Service in 1999. At the 2002 session, this was also referred to by a number of indigenous organizations, including the Inuit Circumpolar Conference (ICC), the African Indigenous Women's Organization (AIWO), CAPAJ (Comisión Jurídica para el Autodesarollo de los Pueblos Originarios Andinos), the Indigenous Information Network (IIN, Kenya), the Metis National Council (Canada), the Ogiek Rural Integrated Project (Kenya) and the Saami Council, who made the following statement:

> *These principles and specific criteria, at a minimum, must be guaranteed if we are to advance negotiations and constructive dialogue with governments concerning the substantive wording of the Draft Declaration articles...such negotiations and dialogue must take place in open, plenary forum – not behind closed doors, and consistent with our demands for direct, meaningful and full participation.*

Invitation to the Indigenous Caucus: In another development, the governments reaffirmed that an earlier invitation to the indigenous peoples to attend their meetings was still open. After consultation, the indigenous caucus decided not to accept the invitation, as they did not wish to divert time, attention and resources away from the plenary sessions but left it open for individual indigenous delegations to attend if they so wished.

Collective rights

The Draft Declaration contains many articles that make specific or implicit reference to collective rights, and the collective aspects of indigenous rights, such as the right to self-determination, and is integral to any discussion on indigenous peoples' rights. This is thus a fundamental concept in the discussions. As a Berber representative pointed out:

> *Collective rights contain the right to cultural identity, the right to protect and teach the mother language at all levels: school, university; land rights, mineral and forest rights, and the right to self-determination...ILO Convention No. 169 is the first step to recognize collective rights, the Declarations adopted at the [World Conference on Human Rights], Vienna and [World Conference against Racism], Durban another, but the adoption of this Declaration on the Rights of Indigenous Peoples will be a necessary step for the recognition of indigenous peoples' rights.*

Indigenous delegates referred to existing international instruments that recognize collective rights such as the two international covenants (ICCPR and ICESCR), the International Convention on the Elimination of Racial Discrimination, ILO Convention No. 169 on Indigenous and Tribal Peoples, 1989, the UNESCO Declaration on Race and Racial Prejudice, 1978, the African Charter on Human and Peoples' Rights, 1981, the Convention on Bio-Diversity, the Universal Declaration on Cultural Diversity (UNESCO 2001), among others.

A number of governments including Ecuador, Finland, Guatemala, Norway, Peru, the Russian Federation, Switzerland and Venezuela stated that they recognized collective rights and pointed to national legislation, including constitutional provisions, recognizing the collective rights of indigenous peoples. Norway also referred to the fact that, through its' ratification of ILO Convention No. 169, it recognized the collective rights of indigenous peoples. Guatemala, also a signatory to ILO Convention No. 169, affirmed its position thus:

> *For Guatemala, indigenous peoples and their collective rights are an undeniable reality, and their right to self-determination together with the right to development are two collective human rights which are fundamental, and must constitute the basis of the Declaration.*

The United Kingdom recognized individual rights only, and referred to minorities. Australia, Canada and New Zealand raised the issue of possible conflicts with individual rights:

> *Australia appreciates that human rights are usually individual rights rather than group rights or collective rights. However, Australia has been comfortable with the concept of collective rights as the approach is reflected in our domestic legislation and policy relating to indigenous peoples and our support for non-binding UN Declarations on the rights of national, ethnic, religious or linguistic minorities. Within Australia we have recognized that certain rights may be exercised both individually and/or collectively. These include, for example, certain rights of indigenous peoples which fall under the rubric of 'native title'. Native title legislation has clearly established collective rights for indigenous peoples under the Australian legal system...Australia acknowledges that the possibility of conflict between collective rights and individual rights may need to be examined and resolved in some instances. Be that as it may, Australia does not see a need to seriously question the notion of collective rights as a general concept.*

New Zealand recognized collective rights in the Draft Declaration, but on an article to article basis. It recognized collective rights in national legislation - the Treaty of Waitangi recognized the individual and collective rights of the Maori - but wished to balance collective rights with the interests of the Government and of individuals.

Canada's position could be summed up in the following statement:

> *The Canadian Constitution recognizes and affirms those aboriginal and treaty rights in existence as of, or created after April, 1982...Some of these rights, such as hunting or fishing rights, although held by the collective, may be exercised by the individual.*
>
> *The position of the Government of Canada, as previously expressed, is that the recognition in the Draft Declaration of Rights of Indigenous Peoples as collective rights, should be considered on an article by article basis...The Canadian delegation can support the inclusion of standards in the Draft Declaration, such as collective rights to land or self-government, where those rights:*
>
> - *Are of fundamental significance to indigenous peoples;*
> - *Do not deny individuals or third party rights; and*

- *Can be expressed clearly enough to result in practical and identifiable rights and obligations.*

This reference to third party rights generated much debate and discussion. Indigenous representatives saw this as a way of including state and corporate interests in the Draft Declaration, and argued that this would defeat the main purpose of drafting a Declaration on the Rights of Indigenous Peoples. The declaration was aimed at filling the current vacuum in protecting indigenous peoples' rights. As a way forward, Guatemala proposed the inclusion of a separate article on third party rights. Indigenous peoples did not agree:

> *It is indigenous peoples who need to be protected from states and corporate interests because of the historical processes of colonisation: external and internal, neo-colonisation and globalisation. Third party interests should not be included in this Declaration as they are not usually referred to in declarations, which contain general statements of moral principles, nor is this current practice.* (Annex II: Proposals by Indigenous Representatives to the Report of the WG-DDIP 2002)

The Chairperson, in his summary of the discussion, noted the general consensus on the existence of collective rights. However, since there was no agreement as to which rights were collective and which were individual in the Draft Declaration, the next session of the working group should look into the articles that dealt with collective rights.

Land, territories and natural resources

This discussion was related to the previous one on collective rights as indigenous peoples' rights to land, territories and natural resources are rights enjoyed and exercised in a collective manner. Indigenous peoples described the erosion of their land rights by colonization, militarization, exploration and exploitation of forest and mineral resources and colonization.

As described by a representative from the Chittagong Hill Tracts:

> *Our rights to our lands and territories today are interpreted by state governments on the basis of treaties or laws that were imposed upon us under duress. Sometimes, governments deny us our ownership rights on the plea that we never used land as a commodity to own and sell when we made treaties. However, many states today utilise the minerals*

upon such lands although states did not mention sub-soil rights when the concerned treaties were negotiated. It is a situation of "Heads I win, tails you lose".

The Indian Law Resource Centre informed the working group of the recent decision of the Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua of 31 Aug 2001, which found that:

... indigenous peoples have, as a matter of international law, collective rights to the lands and natural resources that they have traditionally used and occupied. The Court further stated that governments violate the human rights of indigenous peoples when they fail to take affirmative legislative or administrative measures to protect and enforce these property rights and when they authorize access to indigenous lands and resources without consulting with indigenous peoples or obtaining their consent.

Some governments, including Australia and France, clarified that while they recognized the rights of indigenous peoples to their lands, this had to be seen within the context of environmental protection, restitution and compensation. Australia described the existing draft as containing genuine and conceptual problems that had to be addressed, particularly with reference to articles 26 and 27 of the Declaration, which specified the "exclusive rights" of indigenous peoples to their lands and natural resources, and thus could be taken as denying third party rights. Peru wished for more clarification of the terms "use and possession" and also expressed concern at certain conflict of interests that might arise. New Zealand referred to the Treaty of Waitangi, which recognized the land rights of the Maori, and suggested that the different articles in the Draft Declaration relating to land rights be placed together in one comprehensive article.

Indigenous representatives made specific reference to national and international laws recognizing indigenous land rights, including ILO Convention No. 169, article 5 of the Convention on the Elimination of Racial Discrimination, and article 27 of the International Covenant on Civil and Political Rights. Within this context, indigenous representatives also drew attention to the general comments, as well as the concluding observations, of the UN Human Rights Committee on Canada, Mexico and Norway, which stated that the right to self-determination, and consequently the right to collective human

rights generally, also applies to indigenous peoples, and that from the concluding observations on Canada, it was evident that this included the right to their land and natural resources (UN documents CCPR/C/79/Add. 112, CCPR/C/79/Add.109 and CCPR/C/79/Add.105).

The Chair pointed out that there was a general consensus around the special relationship of indigenous peoples to their lands but that some states wished for more clarification on specific aspects of some articles. He described this dialogue as an important step in the process.

Discussion on specific articles

Article 13

This discussion was carried over from the previous session of the WG-DDIP and was based on a governmental paper proposing alternative language for article 13 that related to the right of indigenous peoples to

> *Manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.*

Canada read out the accompanying comments to the document and clarified that some governments could accept the original text (Guatemala, Finland, Mexico, Norway, Switzerland and Venezuela), while others had problems with some of the terminology. However, it was stressed that not a single state had denied the terms and concepts in the article as presently worded; merely that some issues needed to be addressed and clarified. A new general paragraph on third party rights was suggested by some governments and read as follows:

> *Implementation of the rights in this Declaration shall take into account measures necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.*

The inclusion of third party rights was supported by Canada, New Zealand, the UK and USA, and the USA also supported the reference to "public safety, order, health or morals or the fundamental freedoms of others."

Alternative language proposed included the insertion of the phrase "in accordance with human rights standards" (Finland, France and

New Zealand), and that it should also be "subject to domestic law" (Australia and Canada). However, Australia, Canada and New Zealand all clarified that they supported the underlying principles guiding article 13 but that they wished to have some issues clarified. Guatemala and Switzerland objected strongly to the reference to national law as being "unacceptable", as did Finland and Norway. Norway stated that such a reference would undermine the overall objective of the process, which is to develop universal standards on the rights of indigenous peoples.

The Indian Treaty Council was firmly opposed to basing the discussion of the working group on anything other than the Sub-Commission text of the Draft Declaration. The paper under consideration by the working group was from last year, and did not reflect current realities as government positions may have changed, as in the case of Mexico, which was now prepared to adopt the Declaration as originally drafted. In addition, this procedure of introducing documents that did not indicate which positions were held by which governments made it difficult for indigenous peoples to identify who to address.

Indigenous peoples objected strongly to the amendments, including the reference to third party rights as mentioned earlier, and to "domestic laws" as summed up by the Maori delegate of Te Kawau Maro:

> *Domestic law should conform to International law; to do otherwise is to be in breach of a General Principle of International Law. Mr. Chairman, International Law should not be subject to domestic law, if that statement is rejected then we should all go home now...what is the point? It is precisely for reasons that domestic law has not afforded adequate protection for Indigenous Peoples that we come to an international forum. Let's be clear about the relationship between domestic law and international law. Domestic law is the vehicle by which international law is taken and implemented into domestic legal systems. International law influences, guides [and] directs domestic law. It is suggested the term "subject to domestic laws" within an international context is an incorrect phrase and should cease to be used.*

The representative of the Inuit Circumpolar Conference stressed:

> *... the purpose of this process is to establish international standards concerning the distinct rights of indigenous peoples. The introduction of this language could potentially narrow our right to maintain and have access to our religious and sacred sites. Rather, any state*

435

prescription of domestic law would have to be consistent with international human rights law pertaining to indigenous peoples and others.

The Chairperson agreed that there was a convergence of opinion with the indigenous peoples but that governments had concerns centred around three main issues: references to (i) human rights standards; (ii) domestic laws and (iii) third party interests.

The representative of AIPP (Asia Indigenous Peoples' Pact) expressed an opinion shared by other indigenous organizations:

... the difficulties expressed by some governments in adopting Article 13 as it exists in the text are not convincing. However genuine their difficulties or apprehensions may be, it is simply not appropriate to address them in this Declaration. There are other ways to take care of their concerns, "such as balancing indigenous rights against state responsibilities". There are separate mechanisms to handle them, or separate mechanisms can be created for this purpose...Therefore, we urge these governments to expeditiously reconsider their position.

Article 6

The original text is as follows:

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

The government discussion paper included alternative language that referred to the Convention on Genocide, 1948, and proposed a separate article on the rights of indigenous children, including a reference to the Convention on the Rights of the Child.

The discussion focused on genocide, physical and mental integrity, children and references to specific conventions. The following states were able to accept the article as originally drafted: China, Denmark, Finland, Guatemala, Mexico, Norway, Peru and Switzerland. However, Canada questioned the concept of "mental integrity" as there was no definition in international law, as did Australia and New Zealand, although the latter stressed it could support this con-

436

cept. Norway supported retention of "physical and mental integrity" and referred to Article 1 of the Convention against Torture, which already included this concept.

Although Australia supported the underlying principles of the article, it believed it could be strengthened, and agreed with Canada and New Zealand regarding alternative language to include specific references to the Genocide Convention. Japan also preferred the alternative language proposed in the government paper. Sweden supported efforts to strengthen the text and was able to accept the term "indigenous peoples" but had reservations regarding collective rights *per se*. It supported the alternative text with references to the Genocide Convention, as did Denmark. The USA believed that the current text did not fully reflect international law on genocide and supported the alternative language, which referred specifically to the Genocide Convention.

Some states were concerned that the original working on the removal of indigenous children was too broad and could include the adoption or transfer of custody of indigenous children in the best interests of the child. Australia, China, Denmark, Guatemala, Peru, New Zealand, Norway and Switzerland, among others, stated they could support a new separate article (new article 6.1) on the rights of indigenous children.

Indigenous representatives did not agree with the references to specific conventions, and did not believe it strengthened the text in any way, quite the contrary. An indigenous Batwa representative described the genocide of Tutsis in the Central African Republic and the need to protect indigenous peoples from this happening again in the future. The representative of Ka Lahui Hawaii clarified that if the Declaration included references to specific conventions such as the Genocide Convention or the Convention on the Rights of the Child, then this would severely curtail its scope as it would then be applicable only in those countries that had ratified the relevant conventions. The USA for instance, which was well known for not ratifying international standards, could thus not be held accountable for specific conventions it had not adhered to. With reference to the earlier discussions on collective rights and the refusal of some states to recognize this fundamental right of indigenous peoples, the Genocide Convention contained references to collective rights. Guatemala shared the concern of indigenous peoples and declared that it would be detrimental to include references to specific conventions.

There term "integrated with other inhabitants of the state" was referred to in the alternative text. This was strongly opposed by indigenous representatives, including from Kuna Yala (Panama) and Jhar-

kand (India), who described the historical processes of assimilation and integration of indigenous peoples. The representative of the Jharkhand Organization for Human Rights declared:

> *....historically, it has been the ones dominating us who have not wanted to integrate. They have been busy homogenizing, exploiting us...even committing genocide. In India for 300 years or so, the tendency has been to non-integrate. Now when indigenous peoples say "enough is enough"– we live our lives – you say integrate. The proposal on integration is absurd, even historically speaking.*

Article 9

The original text of the article is as follows:

> *Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such right.*

The discussion centred on identity, "the right to belong", "nations", the possibility of conflict between customary law and human rights standards, and discrimination/disadvantage.

Some governments clarified that they could adopt the original text including Guatemala, Norway, Sweden and Switzerland, among others. New Zealand stated that it could support the first sentence. Australia had specific concerns about the original text, including about the term "nations", which was not used in the national context, "nor is it a term that has been traditionally associated with Indigenous peoples in Australia. Its adoption in an aspirational document like the Draft Declaration could therefore raise questions and expectations about territorial and constitutional integrity..." The representative of Ka Lahui Hawaii pointed to international instruments that dealt with the concept of "nation", including the Declaration on the Granting of Independence to Colonial Countries and Peoples,1960, while others drew attention to agreements and treaties concluded between indigenous peoples and states as nations and peoples with their own land, territories and resource rights, e.g. in the USA, New Zealand, and in other parts of the world.

In response to Canada's assertion that it did not recognize a "right to belong" as it did not exist in international law, several participants, including the representative of the Inuit Circumpolar Conference, recalled the mandate of the working group, which was to adopt a new

standard on indigenous peoples, and that to limit the Declaration to existing standards would defeat the entire exercise. However, Canada supported "the freedom of indigenous peoples and individuals to belong to an indigenous community or nation in accordance with the tradition and customs of the community or nation concerned".

Sweden withdrew a proposal to include "where those traditions and customs are consistent with international human rights standards" after listening to the opinions of indigenous representatives, and given that their concerns were also met by articles 1 and 45 of the Declaration, as well as the draft Declaration as a whole. Australia and Canada proposed deleting the second sentence (also supported by New Zealand) as the issue of protection against disadvantage was covered in other articles and might be perceived as prohibiting affirmative action programmes.

The Chairperson noted that there was a great convergence of opinion but that some concepts were not sufficiently clear as to lead to consensus, and thus had to be explored further.

Article 7

There was a brief general debate on Article 7:

> *Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention and redress for:*
>
> *a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;*
> *b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;*
> *c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;*
> *d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;*
> *e) Any form of propaganda directed against them.*

The main focus of discussion was on genocide and ethnocide, land dispossession, population transfer (forced relocation), assimilation and negative propaganda. No government paper was circulated for

this article. In support of article 7 as originally drafted were Guatemala, Mexico, Norway and Switzerland.

Guatemala strongly supported the reference to ethnocide in the original article, as it was of vital importance given the historic and continuing practice committed against indigenous peoples in different parts of the world. In addition, this was necessary to fill a gap as current definitions of genocide did not fully cover this term. The representative of the Bangladesh Indigenous Peoples' Forum concurred with this position and gave an example of the cultural ethnocide taking place in his country, including the population transfer policy implemented in the Chittagong Hill Tracts in the 1980s aimed at diluting the indigenous composition of the area. This was strengthened by the remarks of the representative of Rights and Democracy who referred to the definition of genocide in the Rome Statute for an International Criminal Court, which will have jurisdiction over genocide, war crimes and crimes against humanity:

> *In the statute and elements of crime, the ICC elaborated how the crime of genocide can be committed in five different ways. These...refer to art. 6 (a) (b) (c) (d) and (e)...In all cases, the crime has individual and collective elements...art. 7 of the Draft Declaration on the Rights of Indigenous Peoples is totally compatible and consistent with the Rome Statute...*

Canada made some initial comments indicating the need to examine further the prohibition on "integration" as this concept differs from other concepts that are harmful to indigenous peoples and cultures, such as "assimilation". While affirming that protection against genocide was essential for the continued existence of indigenous communities and cultures, Canada questioned the term "cultural genocide" as it was not found either in the Rome Statute or its Elements of Crime. Norway clarified that it had no major problems with article 7, including the reference to ethnocide and cultural genocide, on the understanding that this included forced assimilation and the destruction of indigenous cultures. Even if these terms were not yet accepted in international law, this was a process of developing a new standard on indigenous peoples and thus it was appropriate to introduce new concepts and terms. This view was shared by all indigenous peoples, as stated by the representative of CAPAJ (Comisión Jurídica para el Autodesarollo de los Pueblos Originarios Andinos):

> *Here, it refers to the dispossession of the indigenous lands, territories and natural resources as one of the forms of provoking the ethnocide*

and cultural genocide of indigenous peoples. It is not about creating a new right "exclusive" to indigenous peoples, but of filling a gap in the normative framework of international human rights to protect the survival of indigenous peoples who do not enjoy any collective protection which guarantees their continuity at present.

The Chair proposed that the discussions could continue at the next session of the working group, and asked the governments to present their proposals then.

Article 10

The original article of the Draft Declaration was as follows:

Indigenous peoples shall not be forcibly removed from their lands and territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

The main themes during this discussion centred on the issues of forcible removal and relocation; free and informed consent; just and fair compensation; and the option to return.

The discussion, as with all the above articles, was based on the original article with references to the government discussion paper.

A number of states were able to accept the article as originally drafted, including Guatemala, Mexico, Norway and Switzerland, while Cuba affirmed its support for the collective rights of indigenous peoples. While Canada accepted the principle that indigenous peoples and individuals should not be removed arbitrarily from their lands, it found the text to be ambiguous and needing clarification to include situations where removal is required, for example, for reasons of health or safety. Australia agreed, and also had concerns about the requirement for agreement on compensation prior to removal taking place as this was not possible in those cases where rapid action may be required. Many indigenous representatives described their practical experiences of forced relocation without any compensation and as a result of polices or projects, such as in the Chittagong Hill Tracts of Bangladesh (dam, and influx of settlers) and the Likanantay community in northern Chile as a result of copper mines, among other such situations.

New Zealand interpreted the article to mean that there should be no forced relocation, and wished to include the right to redress as

compensation was sometimes understood to have financial connotations only. This proposal to include indemnity for forced relocation was also supported by Guatemala as being wider in scope than compensation. Norway also emphasized the need to take into account the particular value of the special relationship indigenous peoples have to their lands and territories in this context. Indigenous representatives affirmed this approach, including the representative of Treaty 8 First Nations of Alberta who clarified:

> *...compensation by itself may not provide adequate remedy or redress. This is because our peoples possess a special, unique, particular and spiritual connectedness to the land which needs to be restored and for which no remedy or redress, other than restoration can be adequate.*

Guatemala pointed out that there was general agreement on the substantive issues of article 10, and thus could see no problem in adopting the article.

This ended the discussions on the specific articles.

Report and future work plans

On the afternoon of the last day, the working group met to read through and adopt the report.

This included the following documents: (a) the report of the meeting with a summary of the discussions and five documents: Annex 1 - A Compilation of amendments proposed by some states for future discussions based on the Sub-Commission text (a new title to more accurately reflect the fact that some states can accept the original draft); Annex 2 - Proposals by Indigenous Representatives, which contained the views and positions of the indigenous peoples on the issues discussed; Annex 3 - Comments by the NGO Movimiento Indio "Tupaj Amaru"; Annex 4 – The Mexican Proposal of a Bureau; and Annex 5 – Proposal by the Guatemalan Delegation to Facilitate Consensus on various articles of the Draft Declaration (a separate paragraph on third party rights).[3]

While reading through the draft report, and during the discussion that followed when the report was read out and agreed clause by clause, indigenous representatives voiced their concern at the inclusion in the report of the government discussion papers. They questioned this approach as not being a true reflection of the debate. Indigenous representatives stressed that this was contrary to the spirit

of dialogue and equal participation on which the working group was based, and did not include the interchange of views that took place in the meeting itself in a spirit of positive and constructive dialogue. Norway and some other governments stressed that the report should also include the arguments for retaining the original text, clarified by many governments during the discussions, in order to provide a more balanced perspective. Mexico and Guatemala also raised the question as to whether, in the future, the report should identify the positions held by specific states instead of the current practice of using the anonymous general term of "states" prefixed with "some", "many", "a few" etc.

The proposed dates for the next session of the working group are 2-13 Dec 2002. For the next session, it was agreed that the working group would consider articles 3, 31, 36 and 25-30 on lands and complete the discussion on articles 7, 8 and 11 pending from this session.

Conclusion

At the end of the meeting, the Working Group on the Draft Declaration had adopted not one single article. However, substantive issues were discussed, and the positions of the individual states made clearer during this session. A positive aspect of this process is that indigenous peoples have been able to engage in dialogue and discussion with the governments in a constructive manner, and to do their best to address and allay their concerns.

What seems increasingly uncertain is whether the Declaration can be adopted within the framework of the Decade and, if this is not the case, what the next step should be. This is the question that indigenous peoples, and those states that sincerely wish to see a Declaration on the Rights of Indigenous Peoples adopted, have to address.

Notes

1 ***Editor's note:*** *This article is an abridged version of the original text by Mrs. Chandra Roy. Due to our limited space, we are unfortunately unable to include the introductory section, in which the author provides extremely useful information regarding the background of the Working Group, indigenous participation, working methodologies etc. For a full version please visit our website at: http://www.iwgia.org*

2 ATSIC 2001: *Setting International Standards: An analysis of the United Nations Declaration on the Rights of Indigenous Peoples and the first six sessions of the Commission on Human Rights Working Group*, Prepared for

the Aboriginal and Torres Strait Islander Commission by Sarah Pritchard, June 2001, 3rd edition at page 34.

3 For more details please see the WG-DDIP report on: www.unhchr.ch/huridoca.nsf/Documents?openFrameset

THE PERMANENT FORUM ON INDIGENOUS ISSUES

The United Nations Economic and Social Council established the Permanent Forum on Indigenous Issues on July 2000, on the recommendation of the Commission on Human Rights.

This decision was a breakthrough achievement in the decades-long struggle of indigenous peoples to make their needs and concerns known and to gain standing within the international community. The new UN body brings new ground, as it formally integrates indigenous peoples and their representatives into the structure of the United Nations. It marks the first time in history that representatives of states and non-state actors have been accorded parity in a high level body within the United Nations.

In previous editions of *The Indigenous World,* detailed informaion has been provided on the debates that have taken place during the negotiation process between indigenous peoples' representatives and the government delegations around establishing a Permanent Forum that would respond to the needs and demands of indigenous peoples. In this issue, we will endeavour to give a brief summary of the historical process that led up to establishment of the Forum, a short description of the nature of the Forum and a résumé of events that have taken place over the last year, with special reference to the indigenous processes for nominating their candidates.

Description of the Permanent Forum

The Permanent Forum on Indigenous Issues is located at a high level within the United Nations system, being a subsidiary organ to the Economic and Social Council – ECOSOC.

The Permanent Forum on Indigenous Issues will comprise **16 members**, eight of which will be nominated by governments and eight by the President of ECOSOC, on the basis of broad consultation with indigenous groups. The selection process will have to take into account principles of representativity, and the diversity and geographic distribution of indigenous peoples.

All members of the Forum will act as independent experts on indigenous affairs on a personal basis for a three-year period with the possibility of re-election or nomination for a further term.

The Forum's mandate is a broad one, covering all indigenous issues relating to economic and social development, human rights, the environment, culture, education and health.

Specifically, the Forum will have to:

- Provide expert advice and recommendations on indigenous affairs to the UN Economic and Social Council.
- Raise awareness and promote the integration and coordination of activities related to issues of concern to indigenous peoples within the UN system.
- Prepare and disseminate information on indigenous peoples issues.

The Forum will hold an annual ten-day meeting at either the UN headquarters in Geneva or the UN head office in New York, or any other place the Permanent Forum may decide, in line with the UN's existing procedures and financial regulations.

The meetings will be open, like those of the Working Group on Indigenous Populations. Governments, intergovernmental organisations, NGOs and indigenous peoples' organisations will be able to participate in the Forum as observers.

The Permanent Forum will submit an annual report to the ECOSOC Council on its activities, including any recommendations, for its approval. The report will be distributed to the relevant UN bodies, funds, programmes and agencies.

Funding for the Permanent Forum will come from existing resources, through the regular budget of the United Nations and its specialised agencies, and via possible donations.

Five years following its establishment, ECOSOC will undertake an evaluation of the Permanent Forum's rules of procedure, including the method for selecting its members.

The path towards the first session of the Permanent Forum on Indigenous Issues

The challenges did not end with the official establishment of the Permanent Forum in 2000, however, for there was a need to ensure that ECOSOC's resolution was adequately implemented and that the recently established Permanent Forum would be in a position to respond to the expectations of indigenous peoples.

In this respect, the two most important challenges faced by indigenous organisations during this year were:

- That of ensuring indigenous control over the nomination of the eight indigenous experts.
- That of achieving the allocation, from the UN system, of the necessary financial resources to make possible the creation of an independent Secretariat, staffed by qualified indigenous people, to service the Permanent Forum.

Indigenous processes of regional consultation for nominating candidates

Throughout the whole discussion process on establishing the Permanent Forum, and more particularly following its official establishment, one of the main demands of the indigenous organisations was that of controlling the nomination process for the eight indigenous candidates. Although the resolution refers to the fact that the appointments will be made by the President of ECOSOC on the basis of wide consultation with the indigenous organisations, it does not specify any criteria by which to define what "broad consultation" with indigenous organisations means.

For this reason, over the last year the indigenous organisations have particularly focused on the fact that the best way of "ensuring the broad consultation of indigenous organisations", as established by the resolution on the Permanent Forum on Indigenous Issues, was through regional consultations organised by indigenous peoples, which would nominate candidates for the indigenous members.

Already in 2000, indigenous peoples agreed on a regional division for the nomination of the eight indigenous experts. Their recommendation was that the eight indigenous experts should be nominated on the basis of seven geo-cultural regions: Asia, Africa, Arctic, North America, South America, Central America, and Pacific with one rotat-

ing seat between the three major regions – Asia, Africa and Central/ South America and the Caribbean.

During 2001, the indigenous organisations held a number of meetings with the vice-president of ECOSOC and with Mrs. Mary Robinson, High Commissioner for Human Rights, in which they endorsed the above-mentioned regional distribution of the indigenous experts and expressed their concern that, unless the indigenous peoples were able to recommend their own candidates, through the widest possible regional indigenous consultations, there would be a risk of certain governments trying to control or influence the nomination process for indigenous candidates. This would obviously occur without the participation or consent of the indigenous peoples and would run counter to the spirit of the establishment of the Permanent Forum.

In February 2001, the High Commissioner for Human Rights distributed a circular inviting indigenous peoples' organisations to submit their individual nominations and requesting them to send their lists of candidates prior to 1 October 2001.

This circular caused a great deal of concern among many indigenous organisations, as the request for individual nominations sidelined their own regional consultation processes, which were considered the only way of ensuring the support of indigenous organisations and the legitimacy of the candidates.

In May and July 2001, indigenous representatives held meetings with the vice-president of ECOSOC in which they once again expressed their points of view on the nomination process and defended their proposal for candidates via regional consultations.

In spite of a lack of official funding to support the indigenous regional consultation process, the indigenous organisations organised their consultations for the nomination of candidates during the second half of 2001. These consultations were held to nominate candidates from Asia, Central America, South America, Russia, the Pacific and the Arctic.

The candidates nominated through these indigenous regional consultations were

South America - Amazon Region:	Mr. Antonio Jacanamijoy
South America – Andes/Southern Cone:	Mr. Aucan Huilcaman
Asia:	Mr. Parshuram Tamang
Africa:	Mr. Ayitegau Kouevi
Arctic:	Mr. Ole Henrik Magga
Russia:	Mr. Pavel Sulyanziga
Central America:	Mr. Marcial Arias

North America:	Mr. Willie Littlechild
Pacific:	Mrs. Mililani Trask

The processes by which these consultations were organised was often arduous and, in some cases, a source of controversy but they undoubtedly represented the first significant effort on the part of the indigenous organisations to reach a consensus around nominating their own "experts", thus guaranteeing the necessary legitimacy of the eight indigenous expert members of the Permanent Forum. This was undoubtedly only a start, and these processes will need to be improved and perfected on future occasions but the experience has established a particularly constructive precedent in the search for adequate procedures for the election of the indigenous "experts".

In addition to the candidates nominated by the regional consultations, the Office of the High Commissioner received approximately fifteen individual nominations from different indigenous organisations.

ECOSOC's resolution, July 2001

The substantive meeting of ECOSOC held in Geneva in July 2001 once more considered the issue of the Permanent Forum on Indigenous Issues and adopted a resolution in which it was established that:

- The first session would be held in New York from 13 to 24 May 2001.
- The regional distribution of the eight experts to be nominated by Governments would correspond to the five regional groups operating within the UN system with a rotational system established between the regions for the three remaining places.
- The ECOSOC President would announce the choice of the 16 members no later than 15 December 2001.

Finally, the resolution called upon the General Assembly to consider, in its 2002-2003 budget, an allocation of resources to the Permanent Forum appropriate to its broad mandate.

This meeting of ECOSOC took place on the same dates as the 19th session of the Working Group on Indigenous Populations and so the indigenous caucus, meeting in Geneva, decided to ask ECOSOC if it would be possible to speak on the agenda point devoted to the Permanent Forum. ECOSOC accepted this request from the indigenous caucus and an intervention was made to the plenary in which they once more high-

lighted the importance of the fact that the nomination process should take into account the recommendations of the regional indigenous consultations and also the need for the Permanent Forum to have its own secretariat plus the financial resources necessary to fulfil its mandate.

Nomination of the 16 members of the Permanent Forum

At the end of December 2001, the President of ECOSOC made known the names of the Permanent Forum members.

The experts nominated by the governments were:

Mrs. Otilia Lux García de Cotí (Guatemala)
Mr. Marcos Matias Alonso (Mexico)
Mr. Wayne Lord (Canada)
Mrs. Ida Nicolaisen (Denmark)
Mr. Yuri A. Boitchenko (Russian Federation)
Ms. Njuma Ekundanayo (Democratic Republic of Congo)
Mr. Yuji Iwasawa (Japan)

The nomination of one expert from the Asia regional group remained pending.

The indigenous experts appointed by the President of ECOSOC were:

Mr. Ayitegau Kouevi (Togo)
Mr. Willie Littlechild (Canada)
Mr. Ole Henrik Magga (Norway)
Ms. Zinaida Strogalschikova (Russian Federation)
Mr. Parshuram Tamang (Nepal)
Ms. Mililani Trask (United States of America)
Mr. Antonio Jacanamijoy (Colombia)
Mr. Fortunato Turpo Choquehuanca (Peru)

Unfortunately, the ECOSOC President did not appoint all the candidates elected in the regional consultations but it is important to note that, of the eight indigenous experts appointed, 6 are the result of regional consultation nominations. This is in fact significant recognition on the part of ECOSOC of indigenous peoples' internal processes and a great achievement in the process of recognition of the right of indigenous peoples to identify their own indigenous

expert members of the Permanent Forum through consultation processes.

The independent secretariat and financial resources

The need for the Permanent Forum to have the financial resources necessary to fulfil its mandate and the allocation from the UN regular budget of the financial resources necessary to establishing its own secretariat, reporting directly to the ECOSOC secretariat, and with qualified indigenous staff, has been and continues to be one of the main demands of the indigenous organisations in relation to the establishment of the Permanent Forum.

Throughout the whole year, indigenous representatives fought hard for the financial bodies of the UN system to consider their demands for allocation of the funding necessary for the establishment of a secretariat that would service the Permanent Forum, thus giving it the capacity to implement its mandate adequately. Unfortunately, and in spite of all the efforts made by the indigenous organisations to gain the necessary funding, the only and exclusive allocation considered in the biannual budget (2002 and 2003) of the United Nations was for the first session of the Permanent Forum to be held.

The issue of funding of the Permanent Forum thus continues to be one of the continuing major challenges and it still remains to be seen to what extent the UN system is prepared to commit itself to the establishment of a Permanent Forum with the necessary funding to be able to satisfactorily fulfil the task entrusted to it by ECOSOC.

Depriving the Forum of the financial resources with which to establish its own secretariat and a programme of inter-sessional activities would be the most effective way of preventing it from fulfilling its role, turning it into a body with very little direct influence and a minimal capacity for action.

Final considerations

The establishment of the Permanent Forum undoubtedly marks an historic milestone but it also marks the beginning of a long process that will require great efforts on the part of all those involved to ensure that the Permanent Forum is able to fulfil its role successfully within the United Nations system. Members of the Forum, governments, indigenous peoples' representatives and NGOs are faced with the challenge of establishing and developing rules of proce-

dure for the Permanent Forum that will not reduce its capacity for action and that will enable it to implement its broad mandate in the best possible way. It is clear that the process, which requires that the Permanent Forum move from theory to action, from good intentions to concrete results that are of benefit to indigenous peoples, consolidating the recognition and protection of their fundamental rights within the UN system, will be a long and difficult one. With the greatest of efforts, indigenous peoples have accomplished the goal to establish the Permanent Forum and the first obstacle has been surmounted but there still remain many obstacles ahead. The firm and coordinated support of all those involved in the process will be essential if the process is to move forward successfully, and if the Permanent Forum is to be capable of responding to the expectations of the indigenous peoples.

SPECIAL UN RAPPORTEUR ON THE SITUATION OF THE HUMAN RIGHTS OF INDIGENOUS PEOPLE

In 2001 the Commission on Human Rights decided to appoint a Special Rappporteur on the Situation of the Human Rights of Indigenous People. Later this year, the Chairperson of the Commission on Human Rights appointed Dr. Rodolfo Stavenhagen, a Mexican research professor specialized in indigenous rights, as the Special Rapporteur for a three year period.

The appointment of the Special Rapporteur is a significant achievement of indigenous peoples in their on-going pursuit for the protection and recognition of their fundamental rights by the United Nations.

The mandate of the Special Rapporteur is:

- To gather information and communications from all relevant sources – including governments, indigenous peoples and their communities and organisations – on violations of human rights and fundamental freedoms of indigenous peoples.
- To formulate recommendations and proposals on measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous peoples.
- To work in close relation with other special rapporteurs, spe-

cial representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights.

The work of the Special Rapporteur involves fact-finding missions, and communications with governments with regard to the alleged violations of the human rights of indigenous peoples.

In his first rapport, presented to the Commission on Human Rights in April 2002, Dr. Stavenhagen provided an overview of the main human rights issues faced by indigenous peoples and set out the agenda for his future activities.

The Special Rapporteur's first rapport (E/CN.4/2002/97 and E/CN.4/2002/97 Add1) can be found on the web site of the UN Office of the High Commissioner for Human Rights:
http://www.unhchr.ch/indigenous/rapporteur.htm

IWGIA would like to take this opportunity to encourage indigenous organisations and communities to make use of the Special Rapporteur mechanism by submitting to him information pertaining to the violation of their rights, so that he can act on such information.

Any information intended for the Special Rapporteur may be sent to:

Mr. Rodolfo Stavenhagen
Special Rapporteur on the situation of the human rights of indigenous peoples
Office of the High Commissioner for Human Rights
8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland
Fax: 41 22 917 90 10
Email: jwoo.hchr@unog.ch

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (ACHPR)

An interesting and promising process is currently developing within the African Commission on Human and Peoples' Rights (ACHPR) concerning the promotion and protection of the human

rights of indigenous peoples and communities in Africa, and we give here a short update for the past 1-2 years.

The background to the initiation of the process can briefly be summarized as follows: in 1999, IWGIA held a conference on the situation of indigenous peoples in Africa in cooperation with PINGOs Forum in Tanzania. This conference recommended that the African Commission on Human and Peoples' Rights should be encouraged to address the human rights situation of indigenous peoples in Africa, which it had so far never done before. One of the members of the African Commission – Commissioner Barney Pityana from South Africa - participated in the Tanzania conference and, during the following sessions of the African Commission in Rwanda and Algeria respectively, he brought up the issue. Initially, the African Commission tended to reject the issue, as it did not find the term *indigenous peoples* applicable to African conditions. The main argument was that all Africans are indigenous to Africa and that no particular group can claim indigenous status.

However, during the 28th Ordinary Session of the African Commission, which took place in Benin in October 2000, the situation of indigenous peoples was on the agenda as a separate agenda item. Although the issue was initially not positively received, its inclusion on the official agenda was a crucial historical step forward since it gave the Commission and indigenous people the possibility of pursuing the matter further. During the Benin session, a *"Resolution on the Rights of Indigenous People/Communities in Africa"* was adopted by the Commission. The resolution resolved to set up a working group with the following mandate:

- To examine the concept of indigenous people and communities in Africa;
- To study the implications of the African Charter on the human rights and well-being of indigenous communities;
- To consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities.

The adoption of this resolution was a remarkable step forward, indicating the willingness of the African Commission to debate the issue. The 29th Ordinary Session of the African Commission took place in Tripoli, Libya from 23 April – 7 May 2001. For the first time ever, five indigenous representatives participated in this session, and they were allowed to present a statement, even though none of their organizations have observer status with the Commission. The indigenous

representatives participated and spoke in the session, organized a seminar during the session and presented recommendations to the African Commission for the future work of the proposed Working Group on the Rights of Indigenous People/Communities in Africa.

The indigenous participation in the session of the African Commission in Libya was very important as, for the first time, indigenous people had the opportunity of presenting their cases directly to the African Commission. They actively lobbied the governments and Commissioners and, through the seminar they organized during the session, they got the chance to voice their concerns and discuss directly with other human rights NGOs and interested state parties.

During the private session of the 29th Session in Libya, the "*Working Group on the Rights of Indigenous People/Communities in Africa*" was established by the African Commission.

This Working Group has a different nature than the UN Working Group on Indigenous Populations. The Working Group under the African Commission is a small task force to which a few people are nominated by the African Commission in their personal capacity as experts. It is not an open forum with broad participation like the UN Working Group. The "Working Group" model is one of the mechanisms that exist within the African Commission to study various human rights issues of concern, and there are presently also other Working Groups on other topics. The members nominated by the African Commission to serve on the Working Group were:

- Commissioner Barney Pityana (chairman of the Working Group) (from South Africa)
- Commissioner and chairman of the African Commission Kamel Rezag Bara (from Algeria)
- Commissioner Andrew Chigovera (from Zimbabwe)
- Naomi Kipuri (indigenous expert – Maasai, Kenya)
- Zéphyrin Kalimba (indigenous expert – Batwa, Rwanda)
- Mohamed Khattali (indigenous expert – Tuareg, Mali)
- Marianne Jensen (IWGIA, independent expert)

Fiona Adolu from the secretariat of the African Commission was designated secretary to the Working Group.

The Working Group held its first meeting in the Gambia on October 12, 2001, prior to the start of the 30th Session of the African Commission which took place from 13 – 27 October 2001. During the meeting, it was agreed that the first task of the Working Group would be to develop a Conceptual Framework Paper. This paper would be

the first step in the formulation of a report to be submitted to the African Commission – presumably in April-May 2003. It was decided that the paper should make some initial discussion of the characteristics of indigenous peoples in Africa and give an idea of which groups of peoples we are talking about, defining their concrete human rights problems. A first draft of this paper would have to be ready before the next session of the Commission, where it would be discussed at a one-day round table meeting.

It was decided that, provided funding could be obtained, a wider consultative seminar should be conducted in 2002 to discuss the findings of the Conceptual Framework Paper with a broader audience of indigenous people and experts on the issue.

It was furthermore considered that it was important for more indigenous people themselves to participate in the forthcoming sessions of the African Commission in order to present their situation, and that their organizations should apply for observer status with the Commission so that they would be allowed to participate and speak in the sessions.

Another important activity of the Commission is the preparation of an analysis of the African Charter on Human and Peoples' Rights seen in the light of the discussion of the human rights of indigenous peoples.

In the 30th Session in the Gambia, two of the indigenous representatives of the Working Group and IWGIA made statements under agenda item 10(i) "Situation of indigenous people", which is maintained as an agenda point under agenda item 10 "Promotional Activities". In his statement, the representative of the government of South Africa welcomed the establishment of the Working Group as an important initiative. However, some of the commissioners strongly voiced their opposition to the issue, stating that the African Commission seemed to be taking on its fragile shoulders an issue that was not the concern of the Commission. They maintained that the term *indigenous* could not be used meaningfully in an African context and that it implied negative colonial connotations. This position was, however, contested by other commissioners, reflecting the differing positions within the Commission.

A first draft of the Conceptual Framework Paper was produced by the Working Group prior to the round table meeting, which took place as planned prior to the 31st Ordinary Session of the African Commission in Pretoria, South Africa from 2-16 May 2002. The round table meeting was attended by the members of the Working Group and four invited experts. The draft paper was discussed, and the approach

used in the paper seemed to be generally accepted. During the round table meeting it was agreed to proceed with the further drafting of the report, which will hopefully be discussed at a wider consultative seminar in October 2002.

During the 31st session, Commissioner Barney Pityana presented a progress report of the work of the Working Group and two of the indigenous experts gave statements on behalf of the Working Group. Organisations such as the International Labour Organization (ILO), the Botswana Center for Human Rights and IWGIA also gave statements. The comments from those commissioners who spoke were generally positive and constructive, encouraging more of the commissioners to take an active interest in the issue of the human rights of indigenous peoples and minorities.

Several commissioners have now expressed an interest in dealing with the issue and in cooperating with the Working Group. This open attitude on the part of the African Commission is very commendable and encouraging. There is no doubt that the issue of indigenous peoples remains difficult in an African context. However, the African Commission is a major platform of debate, and if the African Commission does endorse the significance of supporting marginalized and vulnerable groups such as indigenous peoples, this will send a very important message and help facilitate a much needed dialogue between African governments and indigenous peoples.

451

PART III

IWGIA PUBLICATIONS AND GENERAL INFORMATION

BEST COPY AVAILABLE

IWGIA PUBLICATIONS 2001/2002

No.107 Thomas Køhler & Kathrin Wessendorf (eds.): *On the Way to a New Millennium: Indigenous Peoples in the Russian North.* RAIPON & IWGIA 2002. 292 p. ill. & maps. US$ 16.00; GPB 11,20; DKK 120,00. ISBN: 87-90730-52-6

No.106 Fergus MacKay: *A Guide to Indigenous Peoples' Rights in the Inter-American Human Rights System.* Forest Peoples Programme & IWGIA 2002. US$10.00, GBP 7,00, DKK 85,00 - ISBN: 87-90730-59-3

No.105 Suhas Chakma & Marianne Jensen (eds.): *Racism against Indigenous Peoples.* Asian Indigenous and Tribal Peoples Network & IWGIA 2001. 336 p. US$ 16,00; GBP 11.20; DKK 120,00. ISBN: 87-90730-46-1

Indigenous Affairs 2001
Racism 1/2001
Militarization 2/2001
Self-Determination 3/2001
Sustainable Development 4/2001

Indigenous Affairs 2002
International Processes – Perspectives and Challenges 1/2002
Bolivia (in print) 2/2002
Urban Indigenous 3/2002
Poverty 4/2002

IN SPANISH

Beatriz Huertas Castillo. *Los pueblos indígenas en aislamiento. Su lucha por la sobreviviencia y la libertad.* IWGIA 2002. 256 p., ill. & maps. S/60 – US$ 18,00. ISBN 87-90730-57-7.

Mattiace, Shannan L, Rosalva Aída Hernández y Jan Rus (eds). *Tierra, libertad y autonomía: impactos regionales del zapatismo en Chiapas.* CIESAS & IWGIA 2002. 442 p., ill. & maps. 130 MXP – US$13.50. ISBN 968-496-443-9.

Fergus MacKay. *Guia para los Derechos de los Pueblos Indigenas en el Sistema Interamericano de Derechos Humanos.* Forest Peoples Programme & IWGIA, 2002. 171 p. US$ 10.00, GBP 7,00, DKK 85,00.ISBN: 87-90730-58-5.

García Hierro, Pedro, Alberto Chirif Tirado & Alexandre Surrallés Calonge. *Una Historia Para el Futuro. Territorios y Pueblos Indígenas en Alto Amazonas.* CORPI, Racimos de Ungurahui & IWGIA 2001, 175 p., ill. & maps. ISBN: 87-90730-55-0.

Roberto Balza Alarcón. *Tierra, Territorio y Territorialidad Indígena. Un Estudio Antropológico sobre la Evolución en las Formas de Ocupación del Espacio*

458

del Pueblo Indígena Chiquitano de la Ex-Reducción Jesuita de San José; APCOB, SNV & IWGIA 2001, 356 p., ill & maps. ISBN: 99905-0-038-X 99905-0-043-6.

ASUNTOS INDÍGENAS 2001
Racismo 1/2001
Militarización 2/2001
Auto-determinación 3/2001
Desarrollo Sostenible 4/2001

ASUNTOS INDÍGENAS 2002
Procesos Internacionales – Perspectivas y Desafíos 1/2002
Bolivia (en preparación) 2/2002
Indígenas Urbanos 3/2002
Pobreza 4/2002

PUBLICATIONS IN OTHER LANGUAGES

Marianne Jensen and Greta M. Maganga (eds.): *Wenyeji Asilia Katika Afrika Mashariki, Kati Na Kusini* (Swahili translation of *Indigenous Affairs no. 2/99* on Hunter-Gatherers and Pastoralists in Africa); IWGIA 2001, 148 pages. ISBN: 87-90730-44-5 - US$ 10.50; GBP 7,30; DKK 85,00

Jens Dahl & Alejandro Parellada (eds.): *Katutubong Mamamayan* (Tagalog - Philippines - translation of *Pueblos Indígenas*); IWGIA 2001, 131 pages ISBN 87-90730-40-2

Jens Dahl & Alejandro Parellada (eds.): *Masyarakat Adat di Dunia. Eksistensi Dan Perjuangannya* (Bahasa - Indonesia translation of *Pueblos Indígenas*) IWGIA 2001, 139 p. ISBN 87-90730-39-9

Jens Dahl & Alejandro Parellada (eds.): Thai translation of *Pueblos Indígenas*) IWGIA 2001, 127 p. ISBN 87-90730-30-5

In Danish

Annelin Eriksen & Knut Rio: *STILLEHAVSFOLK I MELANESIEN*
Red. Käthe Jepsen; IWGIA 2002, 40 s. (ill.)
ISSN: 1399-9540 / ISBN: 87-90730-54-2 DKK 25,00

Morita Carrasco: *MAPUCHE – Et indiansk folk i Argentina og Chile*
Red. Käthe Jepsen; IWGIA 2001, 40 s. (ill.)
ISSN: 1399-9540 / ISBN: 87-90730-38-0 DKK 25,00

IWGIA MEMBERSHIP

IWGIA welcomes new members. If you wish to apply for membership and become part of our dedicated network of concerned individuals, please consult our homepage at **http://www.iwgia.org** for details and membership form. Membership fees for 2002 are

US$ 50.00/DKK 395 for Europeans, North Americans, Australians, New Zealanders and Japanese.
US$ 20.00/DKK 160 for members from the rest of the world:
US$ 30.00/DKK 235 for students and senior citizens.

For IWGIA, membership is an important sign of support to our work, politically as well as economically.

SUBSCRIPTION RATES 2002

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD

Individuals: 50.00 US$ / 410.00 DKK
Institutions: 80.00 US$ / 650.00 DKK

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD & BOOKS

Individuals: 100.00 US$ / 810.00 DKK
Institutions: 140.00 US$ / 1140.00 DKK

ASUNTOS INDÍGENAS & El MUNDO INDÍGENA

Individuals: 50.00 US$ / 410.00 DKK
Institutions: 80.00 US$ / 650.00 DKK

ASUNTOS INDÍGENAS & El MUNDO INDÍGENA & LIBROS

Individuals: 80.00 US$ / 650.00 DKK
Institutions: 115.00 US$ / 930.00 DKK

IWGIA's publications are published on a non-profit basis.
Your subscription is a direct contribution to the continuing production of IWGIA's documentation and analysis of the situation of indigenous peoples worldwide.

For subscription - contact IWGIA by

e-mail: iwgia@iwgia.org
website: www.iwgia.org
or fax: +45 35 27 05 07

THE INDIGENOUS WORLD 2001/2002

IWGIA's Yearbook is issued every year in June and provides an update on the state of affairs of indigenous peoples around the world.

With contributions from indigenous and non-indigenous scholars and activists, ***The Indigenous World 2001/2002*** gives an overview of crucial developments in 2001 and early 2002 that have impacted on the indigenous peoples of the world.

This issue contains:

- Region and country reports that cover most of the indigenous world.
- Updated information on the processes within the UN system that relate to indigenous peoples:
  - The Draft Declaration on the Rights of Indigenous Peoples
  - The Permanent Forum on Indigenous Issues
  - The Special Rapporteur on the Human Rights of Indigenous Peoples
- News about the African Commission on Human and Peoples' Rights.

The Indigenous World 2001/2002 is a must for those who want to be informed about the most recent issues and developments within the indigenous world.

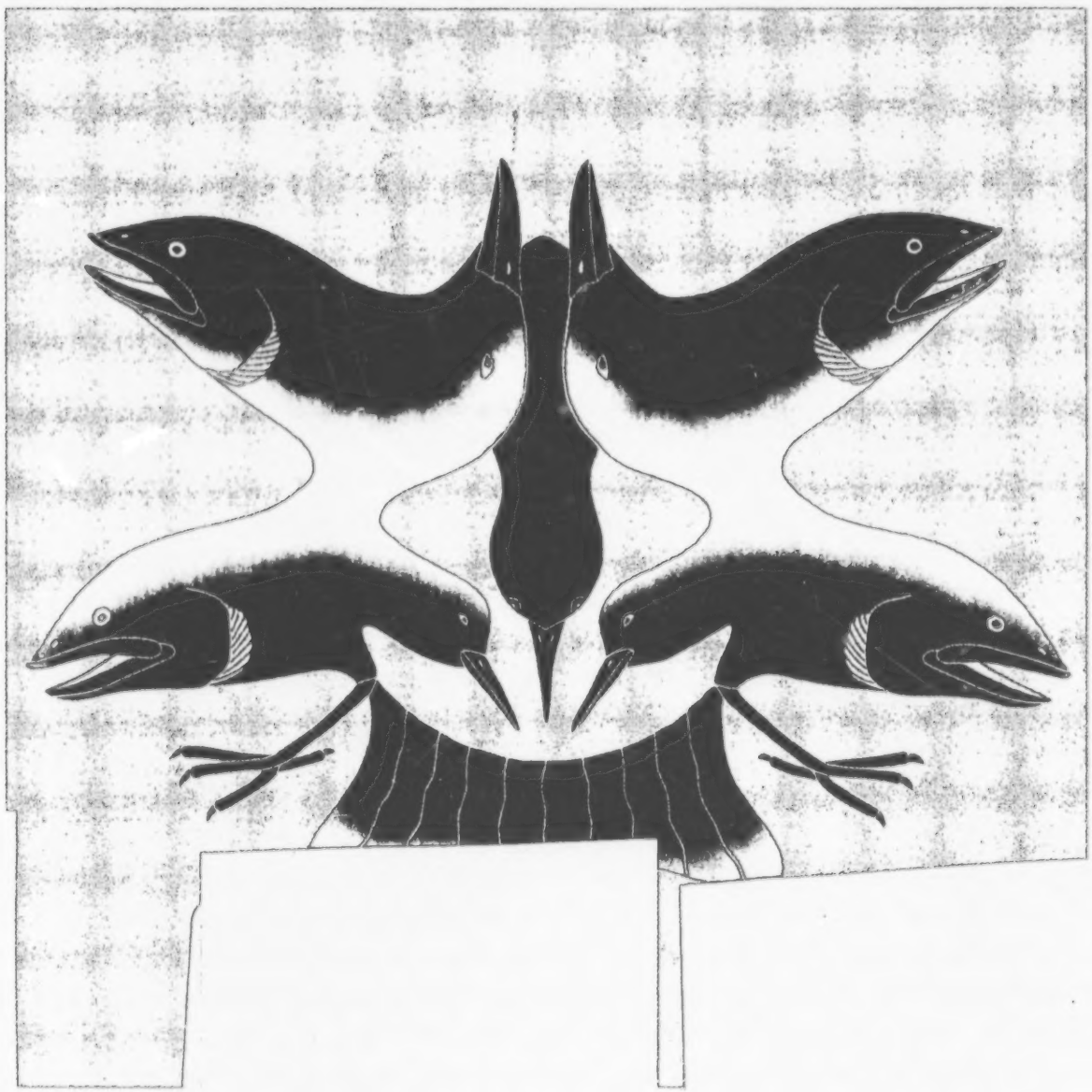
IWGIA
INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

459.

ISBN 87-90730-70

EL MUNDO INDIGENA

2001-2002



$60

EL MUNDO INDIGENA
2001/2002

IWGIA
Copenhague 2002

BEST COPY AVAILABLE

EL MUNDO INDIGENA 2001/2002

© Copyright: Los autores e IWGIA (Grupo Internacional de Trabajo sobre Asuntos Indígenas), 2002 - Todos los derechos reservados.

La compilación y edición de este volumen de *El Mundo Indígena* ha sido coordinada por Diana Vinding.

Cubierta, mapas y tipografía: Jorge Monrás
Traducción al español: Mario Di Lucci
Corrección de pruebas (español): Mario Di Lucci & Janet Ferrari

Editores por región

El Artico y América del Norte – Kathrin Wessendorff
México & América Central – Diana Vinding
América del Sur – Alejandro Parellada
Australia y el Pacífico – Diana Vinding
Asia – Christian Erni
Africa – Marianne Jensen
Derechos indígenas – Lola García-Alix

Impresión: Eks-Skolens Trykkeri,
Copenhague, Dinamarca

ISSN 0105-6387
ISBN 87-90730-71-2

Foto de cobertura: *"Peces volviéndose Aves"* - 1999 - Obra de Kavavaow Mannomee. Este trabajo se reproduce con el grato permiso de The West Baffin Eskimo Cooperative, Cape Dorset, Nunavut – www.dorsetfinearts.com - Todos los derechos reservados.

Se permite la reproducción y distribución de información contenida en *El Mundo Indígena, Asuntos Indígenas* y los libros de IWGIA en tanto se citen las fuentes. Sin embargo, la reproducción completa de libros no se autoriza sin el consentimiento de esta organización. Las opiniones expresadas en las publicaciones de IWGIA no expresan necesariamente las del Grupo de Trabajo.

IWGIA

GRUPO INTERNACIONAL DE TRABAJO SOBRE ASUNTOS INDIGENAS
Classensgade 11 E, DK 2100 - Copenhague, Dinamarca
Tel: (+45) 35 27 05 00 - Fax: (+45) 35 27 05 07
E-mail: iwgia@iwgia.org - www.iwgia.org

Este libro ha sido producido con la ayuda financiera del Ministerio Danés de Relaciones Exteriores y de la Agencia Noruega de Cooperación para el Desarrollo

463

CONTENIDO

Editorial 8

Sobre los autores 11

PARTE I - Informes por regiones y países

El Artico

El Consejo Artico 22
Groenlandia 25
Sápmi
Noruega 30
Suecia 33
Rusia 38
Los pueblos indígenas de Rusia 39
Chukotka 45
Alaska 46
Nunavut 51

América del Norte

Canadá 56
Los Territorios del Noroeste 63
Los Estados Unidos 66

México y América Central

México 76
Guatemala 88
Nicaragua 93
Panamá 100

América del Sur

Colombia 108
Venezuela 115
Perú 125
Bolivia 134
Brasil 150
Paraguay 163
Argentina 171
Chile 182

Australia y el Pacífico

Australia 188
La región del Pacífico 196
Ka Pae'aina (Hawai'i) 202
Te Ao Maohi (Polinesia Francesa) 204
Islas Fiji 207
Kanaky (Nueva Caledonia) 213
Islas Salomón 215
Bougainville 218
Papua Occidental 220
Guahan (Guam) 224

Asia del Este y del Sureste

Japón 228
China 233
Tibet 235
Taiwán 240
Filipinas 245
Timor Lorosa'e (Timor Oriental) 255
Indonesia 261
Malaisia 272
Tailandia 275
Camboya 282
Vietnam 289
Laos 296
Birmania 304
Nagalim 312

Asia del Sur

Bangladesh 318
Nepal 328
India 334

Africa del Norte & Africa Occidental

El pueblo amazigh 354
El pueblo tuareg 359

Africa del Este

Etiopía 374
Procesos regionales 379
Kenia 382
Tanzania 389

Africa Central

La Región de los Grandes Lagos:
actualidad política 398
Ruanda 400
La República Democrática del Congo (DRC) 404
Uganda 405
Camerún 407

Africa Meridional

Namibia 412
Botswana 420
Sudáfrica 427

PARTE II - Derechos indígenas

El Proyecto de Declaración 434
El Foro Permanente 452
El Relator Especial de la ONU 460
La Comisión Africana de Derechos Humanos
y del Derecho de los Pueblos 461

PARTE III - Publicaciones e información general 266

EDITORIAL

El año 2001 quedará registrado en la historia como el año en que Occidente, altamente desarrollado tecnológica y económicamente, comprendió su vulnerabilidad y, de un día para otro, fue superado por el temor, la sospecha y el odio. La venganza armada ha sido, hasta el momento, la única respuesta en que pudo pensar. Los ataques terroristas a las Torres Gemelas en Nueva York y el Pentágono en Washington, el 11 de septiembre de 2001, y la muerte de unos 3.000 civiles inocentes, hombres y mujeres, cambió radicalmente el mundo de un día para otro y, mientras que la administración de los EE.UU. y sus aliados se involucran más y más profundamente en su "guerra contra el terrorismo" existen por cierto también razones para preocuparse por el movimiento indígena mundial.

El impacto global y prolongado de los eventos del 11 de septiembre no puede ser considerado de otra manera que fuera de proporción cuando se compara con eventos que sucedieron en otras partes del mundo durante el año 2001. Esto es especialmente cierto cuando se consideran los acontecimientos que comprenden a los pueblos indígenas, y esta edición de *El Mundo Indígena* da varios ejemplos de masacres, muertes violentas y desapariciones de pueblos y líderes indígenas –Colombia es un caso a destacar- eventos que son tan condenables y abominables pero que, no obstante, apenas llegan a ser noticia y muy probablemente nunca serán historia.

El impacto del 11 de septiembre fue también sentido directamente por los pueblos indígenas. En algunos casos ha significado que importantes temas indígenas fueran retirados de la mesa como se informa de México. En otros (p. ej., India) la aprobación de una nueva ley antiterrorista es considerada como una amenaza directa contra las organizaciones indígenas. Incluso en otros países, los gobiernos y las autoridades locales hostiles han aprovechado la oportunidad de la "guerra contra el terrorismo" para acusar y castigar a los pueblos indígenas por ser terroristas cuando protestan legítimamente contra la violación de sus derechos fundamentales (ver capítulos sobre Chile, China, etc.) o están utilizando la excitación contra el islamismo para perseguir a pueblos indígenas musulmanes (p. ej., Birmania).

Con el prevaleciente "síndrome terrorista" mundial es, por cierto, de temer que los pueblos indígenas que están simplemente luchando por una mayor autodeterminación y por sus derechos fundamentales puedan ser acusados injustamente en el futuro de ser terroristas y sean tratados como tales. Esta situación podría degenerar en algunos lugares en mayor opresión e incluso enfrentamientos más serios, y los

líderes indígenas necesitarán a partir de hoy toda la perspicacia que puedan mobilizar para no dar a las autoridades un pretexto para reprimirlos a ellos y a sus compañeros.

Las políticas de globalización y neoliberalismo son otros dos factores que están haciendo cada vez más impacto sobre la situación de los pueblos indígenas. Un ejemplo es el Plan Puebla-Panamá que afectará a las comunidades indígenas de todo México y América Central. En Rusia, las comunidades indígenas se enfrentan cada vez más a una ardua competencia con empresas privadas sobre sus tierras y recursos naturales, mientras que en otros casos, derechos ya adquiridos por los pueblos indígenas están siendo amenazados directamente. Por ejemplo, en India, las compañías mineras privadas están abogando firmemente a favor de una enmienda al 5º Registro de la Constitución que posibilitaría el arrendamiento de tierras a extraños en áreas tribales. En Bolivia, todo el proceso de reforma agraria, por el que la población indígena ha luchado durante años, está en peligro por la forma en que el gobierno se vende a los intereses del sector agropecuario y de los grandes terratenientes.

En otras partes del mundo, los pueblos indígenas siguen siendo forzados a reasentarse para dejar lugar a represas hidroeléctricas (p. ej., en Laos, Filipinas, Chile), parques nacionales (p. ej., Bangladesh, India, Tanzania), o en nombre del llamado "progreso" como los san de Botswana y los mon-khmer de Laos. No es de sorprender que el tema del reasentamiento forzado estuvo muy alto en la agenda indígena durante las consultas realizadas en 2001-2002 por el Banco Mundial en conexión con la revisión de sus directivas. Desdichadamente, parece que las directivas revisadas propuestas no llegarán a tener la fortaleza que deberían, e incluso serán aún más débiles que antes.

Aunque esta edición de *El Mundo Indígena* brinda una serie de informes de países que muestran que la situación de los pueblos indígenas de todo el mundo sigue siendo sumamente precaria y que los avances importantes son consecuentemente amenazados, también destaca una serie de acontecimientos positivos que han ocurrido durante el período bajo consideración.

En el ámbito local, uno de esos acontecimientos que vale la pena mencionar es la protesta de varios meses de duración de los adivasi y los dalit en el estado de Kerala (India) que terminó con la concesión del gobierno de todas las demandas presentadas por la plataforma adivasi-dalit, Samara Samithy, especialmente en términos de la distribución de tierras. Entre otros ejemplos se encuentra Camboya, donde se aprobó una nueva ley de tierras que reconoce los derechos indígenas a la tierra y Nicaragua, donde fue reconocida la reivindicación de tierras de la comunidad Awas Tingni.

Un importante suceso de 2001-2002 ha sido el nacimiento de un nuevo país – Timor Lorosa'e. Después de más de 24 años de colonización indonesia y una lucha de liberación que varias veces pareció a punto de colapsar, esta nueva situación nos llena ciertamente de alegría y desde IWGIA enviamos nuestros mejores deseos y esperanzas para el futuro del pueblo de Timor Lorosa'e.

A nivel internacional también ha habido algunos logros importantes. En las Américas, la Corte Interamericana de Derechos Humanos (CIDH), que tiene el mandato de imponer deberes obligatorios a todos los estados americanos para que cumplan con las normas de derechos humanos, ha estado jugando un rol cada vez más importante en la mediación y defensa de los derechos de los pueblos indígenas (ver capítulos sobre Panamá, Paraguay y Nicaragua).

En Africa, ha comenzado un proceso interesante dentro de la Comisión Africana de Derechos Humanos y de los Pueblos (ACHPR) con el establecimiento de un grupo *ad-hoc* que se concentrará en la situación de los pueblos indígenas en Africa. Dada la reticencia de los gobiernos africanos a reconocer el concepto "indígena", este es un promisorio paso adelante que puede abrir un proceso que, a largo plazo, puede dar a la comisión un rol similar al de la CIDH.

En el ámbito de la ONU, la designación de Rodolfo Stavenhagen como Relator Especial sobre la Situación de los Pueblos Indígenas ha sido recibida con grandes expectativas y será en el futuro una contribución significativa para la protección y reconocimiento de los derechos fundamentales de los pueblos indígenas.

Sin embargo, el mayor avance ha sido el exitoso proceso que ahora ha resultado en el establecimiento del Foro Permanente de las Naciones Unidas para las Cuestiones Indígenas bajo ECOSOC. Esta nueva institución de alto nivel dentro del sistema de la ONU constituye un gran avance para los pueblos indígenas y se tiene la esperanza que los apoye en el enfrentamiento de los muchos desafíos de los años venideros: la continua lucha por derechos a la tierra y autodeterminación, el reconocimiento de sus culturas y conocimientos indígenas, la adquisición de igualdad de derechos y de oportunidades.

Esta edición de *El Mundo Indígena* es la número 16. A partir de su inicio –en 1986- nuestro objetivo ha sido documentar lo más completamente posible la situación de los pueblos indígenas de todo el mundo. Aunque todavía estamos lejos de esa meta, también sentimos que hemos logrado algún progreso durante el transcurso de los años. Por esto queremos agradecer a nuestros muchos contribuyentes y, al mismo tiempo, insistir a todos aquellos que sienten que todavía hay demasiados defectos, a que presenten sus sugerencias y contribuciones para que podamos seguir mejorando nuestra cobertura del mundo indígena.

***Diana Vinding** - Editora coordinadora*

468

SOBRE LOS AUTORES

IWGIA desearía expresar su caluroso agradecimiento a las siguientes personas y organizaciones por haber contribuido a *El Mundo Indígena 2001/2002*. Quisiéramos agradecer también a aquellos autores que han deseado contribuir anónimamente y no se encuentran, por lo tanto, en esta lista. Este libro no hubiera podido publicarse sin el aporte de todas estas personas.

PARTE I

El Artico y América del Norte

Esta sección ha sido compilada y editada por Kathrin Wessendorf, Coordinadora del Programa para el Ártico de IWGIA.

Marianne Lykke Thomsen del Gobierno Autónomo de Groenlandia, Oficina de Relaciones Internacionales, es actualmente la representante de Groenlandia en Ottawa. Trabajó para la Conferencia Circumpolar Inuit (ICC) y ha estado vinculada a IWGIA durante muchos años. (*El Consejo Ártico*)

Mette Uldall Jensen es esquimóloga de la Universidad de Copenhague (otoño de 2001). Ha sido miembro activo del grupo nacional de IWGIA de Dinamarca y tomó parte en la organización de la Segunda Conferencia de la Juventud Circumpolar Inuit en 1998. (*Groenlandia*)

Eva Josefsen es saami y oriunda de Alta en Noruega. Es licenciada en Ciencias Políticas y fue miembro del parlamento saami de Noruega de 1997 a 2001. (*Sápmi - Noruega*)

Mattias Åhren es un abogado saami de Suecia. Es Director de la Unidad de Derechos Humanos del Consejo Saami. (*Sápmi - Suecia*)

Leif Rantala es profesor de lengua y cultura *saami* en la Universidad de Lapland, Rovaneimi, Finlandia. Leif Rantala está especializado en los saami rusos. (*Sápmi - Rusia*)

Olga Murashko es antropóloga y co-fundadora del grupo local de IWGIA en Rusia. Trabaja en estrecha colaboración con RAIPON sobre pueblos indígenas y derechos legales en la Federación Rusa. (*Rusia*)

Petra Rethmann es profesora de antropología en la Universidad McMaster, Canadá. Trabaja en el norte del lejano este de Rusia desde 1992 y está actualmente estudiando las posibilidades y las limitaciones de la democratización para los habitantes indígenas de Chukotka. (*Chukotka*)

Gordon L. Pullar, un alutiiq de la Isla Kodiak, es el Director del Departamento de Desarrollo Indígena y Agrícola de Alaska en la Universidad de Alaska Fairbanks. (*Alaska*)

Jack Hicks vive en Iqaluit, Nunavut, donde trabaja para el Gobierno de Nunavut. (*Nunavut*)

América del Norte

Michael Posluns es consultor en relaciones parlamentarias e historia legislativa. Es observador relator sobre discusiones de asuntos relativos a las Primeras Naciones en el Parlamento canadiense. Recién completó su disertación doctoral sobre el testimonio de las Primeras Naciones ante los comités parlamentarios canadienses en los años 70: "La emergencia pública del vocabulario del autogobierno de las Primeras Naciones". (*Canadá*)

Jim Edmonson trabaja para organizaciones aborígenes en el ámbito nacional, regional y comunitario desde 1985. Ha utilizado gran parte de su tiempo como asesor y negociador en conversaciones con el gobierno federal y los gobiernos territoriales sobre demandas de tierra y autonomía. (*Territorios del Noroeste*)

Martha McCollough es antropóloga cultural del Departamento de Antropología y Estudios Étnicos de la Universidad de Nebraska, EE.UU. Su área de interés investigativo incluye las relaciones entre los estados y las sociedades no-estatales. Actualmente está trabajando en un libro que analiza el terrorismo anterior a la era de la reservación en los EE.UU. (*Estados Unidos*)

Mexico, América Central y América del Sur

Esta sección ha sido compilada y editada por Diana Vinding, Coordinadora del Programa para América Central y el Pacífico de IWGIA, y Alejandro Parellada, Coordinador del Programa para América del Sur de IWGIA.

Araceli Burguete Cal y Mayor es socióloga e investigadora en el Centro de Investigación y Estudios Superiores de Antropología

470

Social (CIESAS) y asesora de la organización indígena ANIPA. ***Abel Barrera Hernández*** es antropólogo y director del Centro de Derechos Humanos de la Montaña de Guerrero, una ONG con sede en Tlapa. ***Ricardo Robles Oyarzun*** es sacerdote jesuita, y trabaja con los rarámuri de Chihuahua desde 1963. Fue asesor del EZLN durante los diálogos de San Andrés de 1995 a 1996 y es miembro de la Comisión de Seguimiento del Congreso Nacional Indígena (CNI), desde 1997. (*México*)

Santiago Bastos y ***Manuela Camus*** son antropólogos sociales e investigadores de la Facultad Latinoamericana de Ciencias Sociales, FLACSO-Guatemala. (*Guatemala*)

Dennis Williamson Cuthbert es economista y director del Centro de Investigación y Documentación de la Costa Atlántica, CIDCA. (*Nicaragua*)

Atencio López es indígena kuna y abogado. Es el Presidente de la ONG "Napguana" en Panamá. (*Panamá*)

Ninoska Laya Pereira es abogada, y coordinadora de la Oficina de Derechos Humanos del Vicariato Apostólico de Puerto Ayacucho, oficina asesora de la Organización Regional de Pueblos Indígenas del Amazonas (ORPIA) y otras organizaciones indígenas de la región. (*Venezuela*)

Efraim Jaramillo es antropólogo y uno de los más antiguos colaboradores de las organizaciones indígenas colombianas. (*Colombia*)

Jorge Agurto es un comunicador social y acompaña desde hace años a comunidades y pueblos indígenas de Perú en defensa de sus derechos fundamentales. Hasta poco era responsable del Servicio de Información Indígena (SERVINDI) que edita un boletín electrónico quincenal (servindi@yahoo.com), pero recién retomó el cargo de Secretario Técnico de la Conferencia Permanente de los Pueblos Indígenas del Perú (COPPIP), un cargo que fue el primero en desempeñar. Es miembro de la Secretaría Técnica de la Comisión Indígena Nacional de la Amazonía (CINA).

Su correo electrónico: jorgeagurto@hotmail.com (*Perú*)

Carlos Romero es el Director del Centro de Estudios Jurídicos e Investigación Social – CEJIS, de Santa Cruz, Bolivia. ***Ana Cecilia Betancur*** es abogada y trabaja en CEJIS como cooperante del Servicio Holandés de Cooperación al Desarrollo - SNV. (*Bolivia*)

Paulo Celso de Oliveira – Pankararu es abogado y ***Paulino Montejo Silvestre – Maia*** es asesor de comunicación. Ambos trabajan en COIAB, la Coordinación de las Organizaciones Indígenas de la Amazonía Brasileña. (*Brasil*)

Rodrigo Villagra, es antropólogo y abogado y trabaja en TIERRA VIVA, una ONG de Paraguay, desde 1994. (*Paraguay*)

Morita Carrasco es antropóloga y profesora en la Universidad de Buenos Aires, Argentina. Es la autora de *Los Derechos de los pueblos indígenas en Argentina* (2000) y, con Claudia Briones, de *Pacta sunt Servanda. Capitulaciones, Convenios y Tratados con Indígenas en la Pampa y la Patagonia, Argentina* (2000), ambos Documentos de IWGIA. (*Argentina*)

Álvaro Bello es historiador y maestro en ciencias sociales, investigador y especialista en asuntos indígenas. Ha sido consultor de diversos organismos internacionales como CEPAL y GTZ. Actualmente reside en México donde cursa estudios de doctorado. (*Chile*)

Australia y el Pacífico

Esta sección ha sido compilada y editada por Diana Vinding, Coordinadora del Programa para América Central y el Pacífico de IWGIA.

Peter Jull investiga y escribe sobre política indígena en el contexto internacional en el Departamento de Ciencias Políticas y Estudios Internacionales, Universidad de Queensland, Brisbane, Australia. (*Australia*)

Jimmy Nâunââ es el Director Asistente sobre Descolonización y Derechos Indígenas del Centro de Recursos sobre Asuntos del Pacífico (PCRC) en Suva, Islas Fiji. Compiló y editó su informe sobre la base de artículos publicados durante el año en el boletín mensual del PCRC, el Pacific News Bulletin (PNB) así como de otras fuentes del PNB. (*El Pacífico*)

Asia

Esta sección ha sido compilada, editada y parcialmente escrita por Christian Erni, Coordinador del Programa para Asia de IWGIA.

Asia Oriental y Sudoriental

Masaharu Konaka trabajó varios años como secretario en la Liga Buraku para la Liberación, Tokio. De vuelta a Sapporo se dedica ahora al trabajo de traducción para el pueblo ainu. ***Yupo Abe*** ha sido miembro de la dirección de la Asociación Ainu de Hokkaido desde 1996. ***Robert E. Gettings***, Profesor Adjunto del Colegio Superior de Mujeres de Hokusei, tuvo la amabilidad de revisar y corregir el texto en inglés. (*Japón*)

472

Harald Bøckman es sinólogo y Miembro Investigador del Instituto Nacional de Investigación sobre la Paz, Oslo, Noruega. Su campo principal de investigación es el surgimiento histórico de China y la relación entre China y sus vecinos en una perspectiva histórica. (*China*)

Charlotte Mathiassen es antropóloga social y consultora sobre proyectos de desarrollo. Trabaja desde varios años con comunidades tibetanas en el Himalaya y sobre asuntos tibetanos en general. Es desde hace mucho tiempo miembro activo del Comité Danés de Apoyo al Tibet y es miembro de la Red para los Pueblos Indígenas en Dinamarca. (*Tibet*)

La ***Asociación para Políticas de Pueblos Indígenas de Taiwán*** *(ATIPP)* es una ONG establecida y administrada por activistas indígenas taiwaneses que trabaja por el fortalecimiento y habilitación de los pueblos indígenas de Taiwán. Como grupo de investigación y defensoría, ATIPP busca promover los derechos de los pueblos indígenas de Taiwán. (*Taiwán*)

AnthroWatch es un grupo de investigación y defensoría con sede en Manila que trabaja estrechamente con pueblos indígenas de las Filipinas. ***Joan Carling*** es Secretaria General de la Alianza de los Pueblos de la Cordillera (CPA) con sede en Baguio, en las Cordilleras del Norte de Luzón. ***Dario Novellino*** es asesor internacional de Bangsa Palawan (Alianza Indígena por la Equidad y el Bienestar). Actualmente está asociado al Departamento de Antropología de la Universidad de Kent, en Canterbury (R.U.) y con el Instituto de la Cultura Filipina, Ateneo de la Universidad de Manila. (*Filipinas*)

El capítulo sobre ***Timor Lorosa'e /Timor Oriental*** ha sido compilado y editado por Diana Vinding, IWGIA, sobre la base del informe de **Torben Retbøll** para IWGIA sobre su visita a Timor Lorosa'e (2001) y su documento sobre "Las Mujeres de Timor Oriental" (2002). Otras fuentes han sido el Pacific News Bulletin e informaciones subministradas por **Maurizio Giuliano**, periodista especializado en ciencias políticas, al que reconocemos con sumo agradecimiento. (*Timor Lorosa'e*)

Emilianus Ola Kleden es el Jefe de Información y Comunicación de la Oficina del Secretariado de la organización nacional "paraguas" de pueblos indígenas, AMAN (Alyansi Masyarakat Adat Nusantara). ***Øyvind Sandbukt***, antropólogo social, ha realizado investigaciones de campo sobre una serie de minorías indígenas en Sumatra y es asesor de proyecto para el consorcio de ONGs de Sumatra WARSI (Foro de Información sobre la Conservación). ***Rudy Syaf***, tiene una formación de economista agrícola, fue previamente coordinador de proyectos y ahora es di-

473

rector ejecutivo de WARSI. ***Adi Prasetijo***, es antropólogo y actualmente está realizando su grado de Maestría en la Universidad de Indonesia, habiendo trabajado previamente como personal de campo en WARSI. ***Danilo Geiger***, es antropólogo social y trabaja en el Departamento de Antropología Social de la Universidad de Zurich, Suiza. Es uno de los miembros fundadores del Grupo Nacional Suizo de IWGIA. *(Indonesia)*

Colin Nicolas es el coordinador del Centro de Intereses Orang Asli (COAC), Kuala Lumpur, Malaysia. (*Malaisia*)

Prasert Trakansuphakon, es un líder karen de Tailandia, un alto miembro del personal de la Asociación Inter Educativa y Cultural de los Pueblos de Tailandia (IMPECT) y miembro del Pacto de Pueblos Indígenas Asiáticos (AIPP). ***Helen Leake***, ha trabajado con IMPECT en comunidades indígenas y tribales durante más de cinco años. Actualmente está trabajando también con la Asamblea de Pueblos Indígenas y Tribales de Tailandia (AITT) sobre temas legales y de ciudadanía. (*Tailandia*)

Sara Colm ha trabajado como periodista, investigadora y en cuestiones relativas a los derechos humanos en Camboya desde 1992. Escribió en forma extensa sobre temas indígenas en Camboya y actualmente trabaja en un libro que documenta la historia de las minorías indígenas de Camboya bajo el Khmer Rouge en el nordeste de Camboya desde 1968 a 1979. ***Graeme Brown*** es un voluntario australiano que ha trabajado en la provincia de Ratanakiri desde 1999, apoyando el desarrollo de recursos de base comunitaria y a una red de defensoría indígena. ***Justin MacCaul*** es australiano y ha estado trabajando en Ratanakiri, Camboya, desde el año 2000. Actualmente está trabajando en el Proyecto Manejo de la Biodiversidad y Áreas Protegidas en el Parque Nacional Virachey, desarrollando sistemas de comunicación e información. (*Camboya*)

El capítulo sobre ***Vietnam*** ha sido adaptado en parte del informe de Human Rights Watch "Represión de montañeses: conflictos sobre tierra y religión", abril de 2002, al que reconocemos con sumo agradecimiento.

Ian Bird, originario de Canadá, ha estado trabajando con el manejo de recursos naturales y temas indígenas en el Sudeste de Asia durante 15 años, y ha vivido en Laos durante los diez últimos años. Es Presidente de la Asociación Mundial para los Pueblos y el Medio Ambiente, una ONG canadiense activa en Laos. También es coordinador del Fondo Canadiense para Iniciativas Locales en Laos, la agencia de pequeños subsidios de la Embajada de Canadá para ONGs y Organizaciones Populares. (*Laos*)

Debbie Stottard, malaya, es la Coordinadora de Alstean-Birmania. ***Queenie East***, británica, es la Encargada de Investigación de la misma organización. Altsean-Birmania (Red Alternativa Asean sobre Birmania) es una red de grupos e individuos del Sudeste de Asia que apoyan los derechos humanos y la democracia en Birmania. Tiene un programa estratégico de mujeres con el objetivo de aumentar el perfil político de las mujeres de Birmania. Su Secretariado se encuentra en Bangkok, Tailandia. (*Birmania*)

Luingam Luithui, un tangkhul naga, es un defensor de los derechos humanos. Durante veinticinco años ha estado activamente comprometido en el trabajo de red local y regional de pueblos indígenas y en la construcción de alianzas con ONGs. (*Nagalim*)

Asia del Sur

La Red de Pueblos Jumma *(JUPNET)* es una organización establecida y administrada por indígenas jumma con base en varios países de Europa y otras partes del mundo. JUPNET intenta promover los derechos de los indígenas jumma mediante el diálogo, la negociación y otros medios pacíficos. ***Sanjeeh Drong***, un garo del norte de Bangladesh, es el Secretario General del Foro de Pueblos Indígenas de Bangladesh, un foro nacional que representa a 45 comunidades indígenas diferentes de Bangladesh. Ha publicado extensivamente libros y en los medios impresos de Bangladesh sobre temas indígenas. (*Bangladesh*)

Parshu Ram Tamang es Profesor Titular de Economía en Sarawati Multiple Campus, Universidad Tribhuvan, Katmandú, Nepal. Es miembro fundador, hasta hace poco Secretario General y actualmente asesor de la Federación de las Nacionalidades de Nepal (NEFEN). También es Presidente de Nepal Tamang Ghedung (NTG) y miembro del Foro Permanente de la ONU sobre Asuntos Indígenas. *(Nepal)*

C. R. ***Bijoy***, es un activista de derechos humanos y vive en Tamil Nadu. Durante los últimos dieciséis años ha participado y ha estado vinculado con los temas y las organizaciones indígenas en India y ha escrito sobre estos temas y otros temas vinculados. ***Samar Bosu Mullick*** es un activista político, profesor e investigador, que ha trabajado en la solidaridad con los pueblos indígenas de Jharkand durante el último cuarto de siglo. Fue una de las personas principales del movimiento jharkand por un estado separado. ***Ratnaker Bhengra*** es abogado y miembro de la Organización de Jharkand para los Derechos Humanos (JOHAR), con sede en Ranchi, que trabaja por la autonomía

dentro del estado indio. ***Linda Chhakchhuak*** es una periodista asentada en Shillong, Meghalaya, nordeste de India, y editora de *"Grassroots Options"*, la primera revista del nordeste de India sobre pueblos, medio ambiente y desarrollo. (*India*)

Africa

Esta sección ha sido compilada y editada por Marianne Jensen, Coordinadora del Programa para Africa y editora de la publicación trimestral *Asuntos Indígenas.*

Hassan Idbalkassm es un amazigh de Marruecos. Es abogado y Presidente de la asociación amazigh Tamaynut, la cual fundó en 1978. También es Vicepresidente del Congrès Mondial Amazigh que está integrado por más de 70 asociaciones amazigh del Norte de Africa y Europa. *(Africa del Norte)*

Jeremy Keenan, es actualmente Investigador Senior Adjunto y Director del Programa sobre Estudios del Sahara en la Escuela de Estudios sobre el Desarrollo de la Universidad de East Anglia, R.U. Anteriormente profesor de antropología social, su principal área de investigación es el Sahara. Comenzó a trabajar con los tuareg en 1964 y ahora trabaja con ellos más o menos continuamente. Es autor de tres libros y unos 50 artículos y trabajos académicos sobre los tuareg.
Contacto: jeremkeenan@hotmail.com (*Africa del Norte y del Oeste*)

Nyikaw Abula Ochalla es un indígena anuak del estado nacional de Gambela en Etiopia. Tiene un grado de gestión y administración pública de la Universidad de Addis Ababa, Etiopía. Está activamente involucrado en asuntos de derechos humanos relacionados con los pueblos indígenas de su propia región así como de otros pueblos marginados que viven en otros estados de Etiopía. Contacto: Ochalla@hotmail.com o Gambela_2000@yahoo.com (*Etiopía*)

Naomi Kipuri es maasai del distrito Kajiado, Kenia. Es antropóloga y fue profesora de la Universidad de Nairobi, siendo ahora consultora sobre temas de desarrollo. Realiza investigaciones y trabajo de desarrollo y está interesada en temas de desarrollo relacionados con los derechos humanos y los derechos de los pueblos indígenas. (*Africa del Este y Kenia*)

Benedict Ole Nangoro es maasai de Kiteto, Tanzania. Tiene una Maestría en Estudios sobre el Desarrollo del Instituto de Estudios sobre el Desarrollo de la Universidad de Sussex, R.U. Actualmente está trabajando con CORDS, una ONG local que

476.

trabaja con comunidades indígenas pastoras maasai sobre demarcación de tierras, cartografiado, registro y titulación colectiva. *(Africa del Este y Tanzania)*

Dorothy Jackson es la Coordinadora del Programa Africano del Proyecto para los Pueblos de los Bosques, la sección caritativa registrada del Reino Unido del Programa para los Pueblos de los Bosques. El Proyecto para los Pueblos de los Bosques trabaja en apoyo de los pueblos indígenas y tribales de los bosques para asegurar sus derechos a las tierras, recursos y medios de subsistencia sostenibles. *(Africa Central)*

Robert K. Hitchcock es Profesor de Antropología y Geografía en la Universidad de Nebraska-Lincoln, EE.UU. Su libro más reciente se llama *Organizing to Survive: Indigenous Peoples' Political and Human Rights Movements* (2002, Routledge Press). *(Botswana y Namibia)*

Megan Biesele cursa antropología en la Universidad de Texas, Austin, EE.UU. Trabaja desde muchos años con comunidades ju|'hoan san en Botswana y Namibia en un plan de abogacía y documentación. Es la Presidenta de la Fundación de los Pueblos del Kalahari. *(Namibia)*

Cecil le Fleur ha trabajado para La Conferencia Nacional Griqua de Sudáfrica (G.N.C.) durante los últimos 27 años y hoy es su coordinador. También es presidente del "Consejo de Jefes de la G.N.C." y "La Conferencia Consultiva Nacional Khoi-San" (N.K.C.C.), así como también miembro ejecutivo del comité del Consejo Nacional Khoi-San (N.K.C.). Además es miembro ejecutivo del comité de "El Comité Coordinador de los Pueblos Indígenas de Africa" (I.P.A.C.C.) donde ha participado en el trabajo de red y defensoría entre los pueblos indígenas de toda Africa desde 1995. *(Sudáfrica)*

PARTE II

Derechos Indígenas

Esta sección ha sido compilada y editada por Lola García-Alix, Coordinadora del Programa de Derechos Humanos de IWGIA.

Rajkumari Chandra Roy es chakma y abogada. Como experta en temas indígenas, ha trabajado durante muchos años en la Oficina Internacional del Trabajo, donde fue parte de un equipo de dos personas, responsable de establecer el nuevo proyecto

477

de cooperación técnica inter-regional, que tiene como objetivo aumentar la conciencia y aplicación de las normas de la OIT, en particular el Convenio sobre Pueblos Indígenas y Tribales (No. 169). Actualmente trabaja como consultora independiente sobre temas legales internacionales, con énfasis en los derechos humanos, los pueblos indígenas, y cuestiones de discriminación y género. Es autora del Documento 99 de IWGIA: *Derechos a la tierra de los pueblos indígenas de Chittagong Hill Tracts, Bangladesh* (2000). (*El Grupo de Trabajo de la ONU sobre el Proyecto de Declaración sobre los Derechos de los Pueblos Indígenas*)

Lola García-Alix es Coordinadora de las Actividades de Derechos Humanos de IWGIA. (*Las Naciones Unidas: El Foro Permanente para los Pueblos Indígenas* y *El Relator Especial de la ONU*)

Marianne Jensen es Coordinadora del Programa para Africa. (*La Comisión Africana de Derechos Humanos y del Derecho de los Pueblos*)

478

PARTE II

INFORMES POR REGIONES Y PAISES

EL ARTICO

BEST COPY AVAILABLE

EL CONSEJO ARTICO

La reunión del Consejo Ministerial Ártico en Barrow (Alaska), en 2000, enfatizó claramente la necesidad de que el Consejo Ártico continúe cooperando con organismos regionales e internacionales relevantes. Ulteriormente, la Presidencia finlandesa ha estado muy activa promoviendo la Región Ártica y el Consejo Ártico con muchas conferencias temáticas regionales e internacionales.

Actualmente, el Consejo Ártico se está preparando para dos eventos importantes en otoño de 2002.

En primer lugar, el Consejo Ártico, bajo la Presidencia finlandesa, está abogando a favor de que se otorgue una voz fuerte a la Región Ártica y sus pueblos en la Cumbre Mundial sobre Desarrollo Sostenible (WSSD), que se celebrará en Johannesburgo en septiembre de este año.

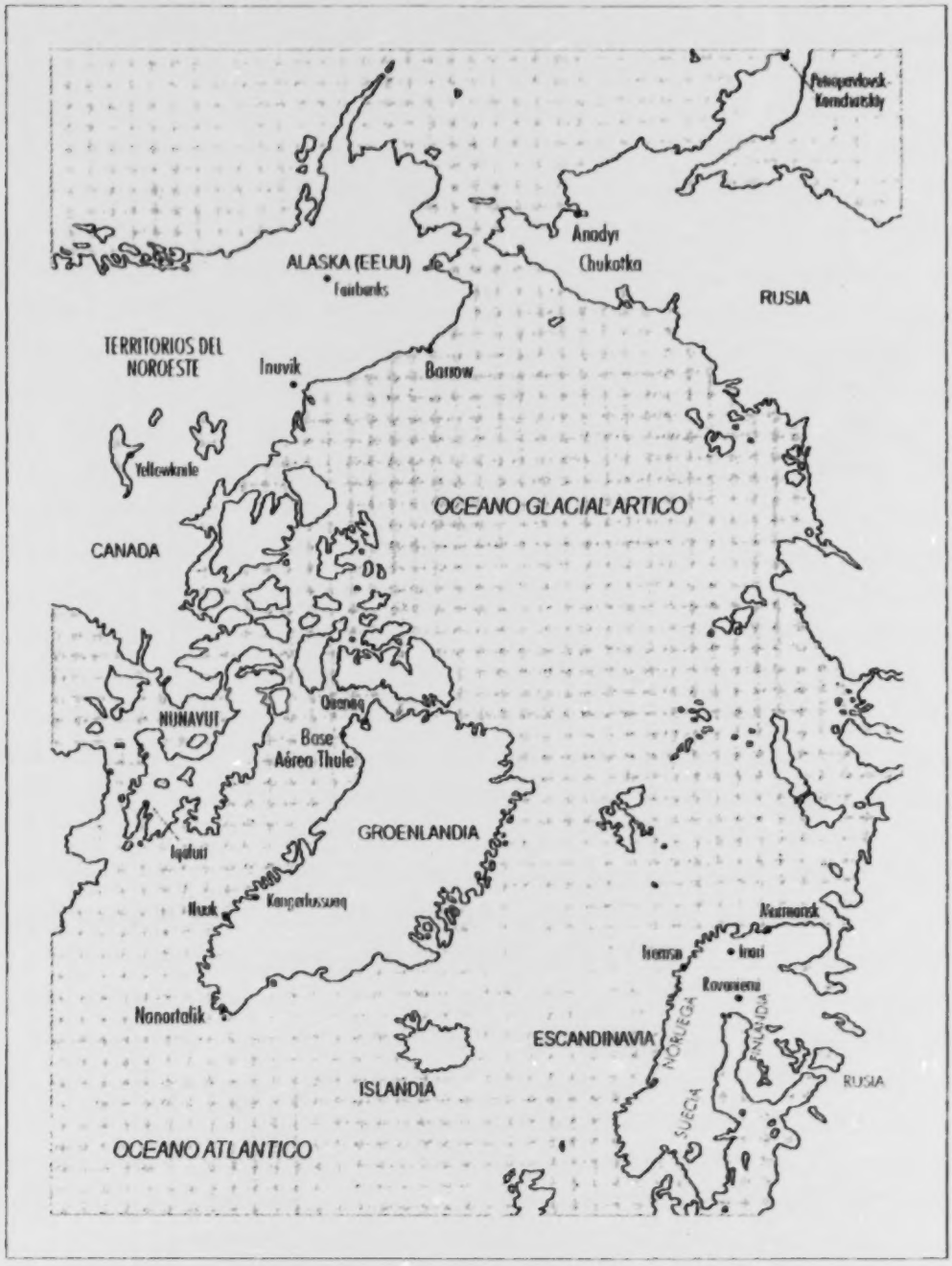
Más específicamente, el Consejo Ártico apunta a destacar la cooperación única entre gobiernos nacionales y pueblos indígenas en un foro intergubernamental de alto nivel, que también tiene asociaciones con estados no-árticos, parlamentarios y organizaciones no-gubernamentales, organismos regionales y redes de investigación.

El Mensaje Ártico, o Dimensión Ártica del Desarrollo Sostenible estará basado en el trabajo actual del Consejo Ártico para promover el desarrollo sostenible y la protección del medio ambiente Ártico, que es muy sensible para las necesidades, aspiraciones y medios de subsistencia de los pueblos del Ártico.

En segundo lugar, el Consejo Ártico está preparando su tercera Reunión Ministerial en Inari, (Finlandia), a comienzos de octubre. Esta reunión marcará el final de una muy activa Presidencia finlandesa y la transferencia de las responsabilidades del Consejo Ártico a Islandia. También se espera que trate las recomendaciones de la WSSD con respecto a establecer normas y prioridades para sus actividades de desarrollo sostenible en el Ártico.

La Reunión Ministerial discutirá además las propuestas para ajustes de la estructura y trabajo del Consejo, sobre la base de consultas con miembros y participantes. Finalmente, los ministros decidirán sobre el programa de trabajo para los próximos dos años en los grupos de trabajo sobre medio ambiente y desarrollo sostenible.

Mientras que los grupos de trabajo y programas establecidos hace mucho tiempo son bastante exitosos en la obtención de fondos para el monitoreo ambiental, evaluaciones y planificación de actividades, se ha comprobado que es difícil lograr el mismo nivel de atención de los gobiernos y donantes para iniciativas bajo el Programa de Desarrollo Sostenible, excepto cuando estas actividades ya son parte de un programa nacional, como en el caso de muchos proyectos relacionados con la



salud. Por eso algunos miembros y participantes argumentan a favor de alguna forma de financiación central y un secretariado permanente.

Un amplio proyecto bajo el Programa de Desarrollo Sostenible es la Investigación de las Condiciones de Vida en el Ártico (SLICA), que tiene como objetivo brindar una adecuada y muy necesitada información estadística comparable de toda la Región Ártica. Se espera que

BEST COPY AVAILABLE

esa investigación exhaustiva realice una importante contribución a la planificación de la política y el desarrollo para la región.

El décimo aniversario de la Estrategia Ártica de Protección Ambiental (AEPS) fue celebrado con una exitosa conferencia en junio de 2001, en Rovaneimi (Finlandia), donde se firmó la Declaración de esta importante cooperación ambiental en 1991. Fue en la reunión del Consejo Ministerial Ártico en Nuuk, (Groenlandia), bajo la Presidencia danesa, que los pueblos indígenas del Ártico fueron aceptados por primera vez como Participantes Permanentes y verdaderos miembros del proceso del Consejo Ártico de acuerdo con las disposiciones de la Declaración de Río sobre Medio Ambiente y Desarrollo que trataba la promoción de la participación efectiva de los pueblos indígenas para lograr el desarrollo sostenible.

En el marco del Consejo Ártico ha habido varias conferencias durante el transcurso de 2001. Especialmente, la Reunión sobre Política Juvenil en el Ártico, celebrada en Rovaneimi del 12 al 14 de septiembre, para discutir, revisar y promover los puntos de vista de la política juvenil en actividades del Consejo Ártico. A comienzos de noviembre (1-2), se celebró una conferencia sobre Fomento de Capacidad consecutiva a la Reunión de los Funcionarios Superiores Árticos coorganizada por Canadá y Finlandia. El objetivo de la conferencia, que también incluyó jóvenes representantes de Groenlandia, era juntar ideas y recomendaciones para el desarrollo de una estrategia de fomento de capacidad y centro para el Consejo Ártico, como se describió en la Declaración de Barrow.

En el verano (4 al 6 de agosto) de 2002, se celebrará en Inari la conferencia "Tomando Vuelo – Conferencia sobre Igualdad de Género y las Mujeres en el Ártico". La conferencia que es una iniciativa conjunta del Consejo Ártico y el Consejo Nórdico de Ministros con Finlandia como coanfitrión, apunta a generar conciencia sobre la situación de las mujeres en el Ártico y dar voz a la mujer para que exprese sus experiencias, opiniones e intereses relativos a acciones futuras en áreas de interés.

GROENLANDIA

Groenlandia es una unidad autogobernante dentro del Reino de Dinamarca. El primer asentamiento colonial danés fue establecido en 1721, cerca de la actual capital, Nuuk. Hasta 1953, Groenlandia era legalmente una colonia danesa y fue recién en 1979 que se estableció el Gobierno Autónomo, y que se introdujo algún tipo de autonomía real. Groenlandia tiene ahora su parlamento y gobierno autónomos responsables de los asuntos internos. En el año 1999, el Gobierno Autónomo estableció una comisión de autogobierno para investigar las posibilidades de asumir más responsabilidades del estado danés. Los temas centrales son relaciones exteriores, asuntos de seguridad, desarrollo económico y política idiomática. Esta última es especialmente importante para una población de sólo 56.000 habitantes, de los cuales el 87% son groenlandeses étnicos (inuit).

Acontecimientos recientes

Durante el año pasado hubo una lucha de poder dentro del partido gobernante mayoritario, Siumut (el Partido Socialdemócrata). Como resultado, Hans Enoksen fue nombrado nuevo líder del partido, creándose así la situación de tener un Primer Ministro del Gobierno Autónomo –Jonathan Motzfeldt- que no es líder de su propio partido. Junto con el cambio de líder partidario, Siumut adoptó una nueva estrategia para el desarrollo igualitario de todas las partes de Groenlandia. Sin embargo, esto puede muy bien entrar en colisión con el deseo del partido de obtener más independencia de Dinamarca, dado que mantener vivos a los distritos más remotos es un asunto costoso. Otro problema que enfrenta Siumut es la creación y planes para crear nuevos partidos como, p. ej., el Partido de las Mujeres (*Arnant Partita*) o un partido que se ocupe de los intereses de los cazadores y pescadores. La distancia entre la vida cotidiana del pueblo y la administración en Nuuk, sumado a la falta de habilidad de Siumut para responder a los intereses de sus votantes, parecen ser la razón de estos nuevos partidos, que sin duda robarán votos a Siumut en las próximas elecciones. La inquietud en el seno del partido Siumut explica en parte el rompimiento del gobierno de coalición entre Siumut y el partido de izquierda Inuit Ataqatigiit a fines de 2001, estableciendo Siumut una nueva coalición con el partido conservador Atassut.

En noviembre de 2001, Dinamarca celebró elecciones para el Parlamento danés y Groenlandia tuvo que elegir dos miembros. Los miembros electos son Kuupik Kleist de Inuit Ataqatigiit (IA) y el ex

Primer Ministro de Groenlandia, Lars Emil Johansen, de Siumut. Los dos políticos ganaron las elecciones concentrándose en temas claves como la independencia, la transferencia de la propiedad completa del subsuelo y una renegociación del acuerdo de defensa entre Dinamarca y los EE.UU. Ninguno de los dos políticos quieren vincularse a un partido danés como hicieron sus predecesores, porque quieren poder votar por lo que ellos consideran mejor para Groenlandia. En cambio, los dos políticos groenlandeses han creado un Grupo del Atlántico Norte, junto con el miembro parlamentario de las islas Faroe.

Con respecto a la política exterior, el Premier de Groenlandia, Jonathan Motzfeldt (de Siumut), se reunió con el nuevo ministro de relaciones exteriores danés, Per Stig Møller. Entre otras cosas, discutieron la base aérea de los EE.UU., en Thule, y la Defensa Nacional Balística (NMD) y decidieron analizar juntos el caso si surgiera una averiguación de parte de los EE.UU. Otro tema fue la próxima presidencia danesa de la Unión Europea, que será usada para invitar a políticos de la UE a Groenlandia.

El debate sobre la lengua

En enero de 2001, se celebró una conferencia en Kangerlussuaq, centrada en temas como el lenguaje de las autoridades groenlandesas; cómo puede ser fortalecida la lengua groenlandesa; qué rol debería jugar la lengua danesa y si Groenlandia debería ser un país mono o bilingüe. La mayoría de los participantes querían que el desarrollo de Groenlandia estuviera basado en tres lenguas: groenlandés, danés e inglés, las que deberían ser fortalecidas en las escuelas públicas.

En febrero de 2001, la Comisión del Autogobierno celebró una reunión en Nuuk donde el debate de la lengua fue otra vez el tema central. La reunión demostró que muchos groenlandeses que hablan groenlandés estaban insatisfechos con el papel dominante del danés en la administración del Gobierno Autónomo, así como en las instituciones educativas. El problema relativo al Gobierno Autónomo que un tercio del personal administrativo no habla groenlandés. En lo que respecta a las instituciones educativas, la mitad de la juventud groenlandesa está enfrentada al problema de no dominar el danés lo suficientemente bien como para terminar sus estudios. El resultado es que aunque sólo un diez por ciento de los niños de las escuelas públicas son monolingües en danés, este grupo cuenta con una enorme mayoría en las escuelas secundarias. Lograr que el groenlandés sea la lengua educacional dominante tiene, por lo tanto, perspectivas a largo plazo. Una solución podría ser fortalecer el desarrollo del groenlandés como la lengua principal pero, al mismo tiempo, otorgar una

484

prioridad más alta al danés en las escuelas, como lo destacó frecuentemente la prensa groenlandesa. Un grupo de padres de Nuuk ha decidido resolver la cuestión a su manera, estableciendo una escuela privada donde los alumnos serán enseñados en groenlandés, danés e inglés desde el primer día de clase. La mayoría de los niños serán de matrimonios mixtos y los padres creen que las tres lenguas son necesarias para funcionar en sociedad y en el sistema educativo.

Recursos minerales y petroleros

En la parte más meridional de Groenlandia, en el área de Nanortalik, se ha estado realizando prospecciones auríferas desde los años 80, conducidas por la compañía groenlandesa Nuna Minerals A/S y la compañía canadiense Crew Development Corporation. La decisión final de establecer una mina dependerá del precio del oro en el mercado mundial y la rentabilidad de la mina, que será examinada durante la primavera y verano de 2002. Para la comunidad de Nanortalik, una mina de oro aportaría empleo y, por lo tanto, fortalecería la economía de la municipalidad. No obstante, también podrían sentirse algunos impactos negativos para la comunidad local y el medio ambiente.

Con respecto a la extracción petrolera, las perspectivas actuales no son muy buenas porque la búsqueda de petróleo en Fylla Banke, al oeste de Nuuk, resultó negativa. Como resultado, las compañías petroleras involucradas han abandonado sus licencias y por el momento no se planea ninguna otra prospección.

El valor potencial del fondo del mar explica el renovado interés en el Polo Norte y los recursos del Mar Polar. Debido a circunstancias geológicas, Groenlandia/Dinamarca podrían tener la posibilidad de aumentar su millaje a 350 millas náuticas en vez de las 200 millas límite. Sin embargo Rusia ya ha planteado una demanda reivindicativa sobre el Polo Norte y parte del Mar Polar en la Comisión de Derechos Marinos de la ONU, mientras que Dinamarca todavía no ha firmado el Convenio.

El Gobierno Autónomo de Groenlandia ha puesto grandes expectativas en las investigaciones sobre petróleo, oro y otros minerales como medio para hacer que la economía y, por lo tanto el país, sea más autosuficiente e independiente de Dinamarca. Además, el petróleo y los minerales son considerados como medios para remediar la dependencia total de la industria pesquera, que pone al país en una situación de increíble vulnerabilidad en caso de fluctuaciones en los recursos vivos.

435

Comercio e industria

Las expectativas puestas en exploraciones petroleras y minerales rentables pueden incluso ser más altas en el futuro porque la gran corporación pesquera Royal Greenland A/S está enfrentando importantes problemas financieros. La deuda de la compañía ha aumentado de 2,3 mil millones de coronas danesas en el año 2000 a 3 mil millones en 2001, en parte debido a la caída de los precios para el principal producto de la compañía –gambas- en el mercado mundial. Además, de tres a cinco fábricas corren peligro de cierre debido en gran medida a la falta de materia prima.

Como resultado de la crisis en Royal Greenland A/S, el Gobierno Autónomo –que es propietario de la compañía- ha decidido otorgar a la compañía un subsidio de 200 millones de coronas danesas. Esto se hace a sabiendas de que la supervivencia de la compañía es vital para el empleo y la economía de Groenlandia. Los 200 millones de coronas danesas han sido financiados por la venta de otra compañía de propiedad del Gobierno Autónomo, el mayor almacén de departamentos de Groenlandia, Pisiffik. El Gobierno Autónomo ha acordado privatizar una gran parte de Pisiffik y liberalizar la legislación comercial para facilitar el hecho de establecer una compañía. Que el Gobierno Autónomo haya duplicado, al mismo tiempo, los subsidios al Consejo Asesor del Consumidor y a la Junta de Competencia podría ser un signo de una actitud más positiva hacia las empresas privadas, que hasta el momento han tenido muchas dificultades en Groenlandia.

Estas aperturas hacia el sector privado llegan en un momento en que el Gobierno Autónomo está enfrentando un escándalo con respecto a la compañía Puisi A/S que tendría que haber producido salchichas de foca y píldoras de aceite de foca para el mercado chino. La compañía se estableció en 1998 y comenzó la producción en 1999, pero después de sólo dos semanas, enfrentó importantes problemas financieros. Resultó que Puisi A/S había pagado por actividades de una compañía hermana fantasma en China donde no existía una fábrica ni mercado para los productos de foca. El gerente general fue despedido y los pagos de la compañía fueron suspendidos. A comienzos de 2001, un informe de los síndicos criticó al director general, a la junta, los miembros y los contadores por una serie de acciones y omisiones de la compañía. El caso Puisi ha costado a la sociedad groenlandesa más de 50 millones de coronas danesas y ha sido un tema candente de debate en los periódicos groenlandeses durante el año pasado. La gente quiere que el asunto sea examinado minuciosamente y se establezcan responsabilidades. Para algunos, el escándalo es un ejemplo de la falta de responsabilidad de las corporaciones del Gobierno Autónomo.

Recursos vivos

En otoño de 2001, fue publicado por un periodista danés, Kjeld Hansen, un libro que analiza la caza y la pesca en Groenlandia. El libro tiene el título, no muy halagador, de *"Farvel til Grønlands Natur" / "Adiós a la naturaleza de Groenlandia"* y en el mismo, Kjeld Hansen critica la forma en que los recursos vivos están siendo usados en Groenlandia. Al hacer esto, cuestiona parte de la autoconcepción groenlandesa de tener una habilidad innata para manejar los recursos de forma sostenible. Aunque Kjeld Hansen está tratando temas sumamente sensibles, el libro ha sido bien recibido en general en Groenlandia y contribuye al actual debate sobre el manejo de los recursos vivos.

Un ejemplo es la discusión de reglamentaciones nuevas y más restrictivas sobre la caza de aves que entró en vigencia el 1 de enero de 2002 y que restringirá la estación de caza. Todos los grupos importantes de interés han tomado parte en la preparación: la organización de los pescadores y cazadores (KNAPK), los guardamontes, la asociación ornitológica "Timmiaq", el Turismo de Groenlandia, la policía, las municipalidades, el Instituto Groenlandés para Recursos Naturales, el Departamento de Empleo y el Departamento para el Medio Ambiente. No obstante, los cazadores expresaron descontento y todo el asunto se transformó en un gran debate en los periódicos groenlandeses. La discusión se ha centrado principalmente en si la reglamentación les ha sido impuesta a los cazadores –que es lo que ellos dicen- o si el el medio de sustento de los cazadores ha sido tomada en demasiada consideración – según alega el Parlamento de Groenlandia. La discusión puede considerarse como un ejemplo de una lucha constante entre cazadores, biólogos y administradores de la fauna y el debate actual sobre el conocimiento de quiénes y las formas de manejo de quiénes son los más correctos. Además, refleja el temor de los cazadores por su medio de subsistencia y el temor de los biólogos por los animales, por lo que los administradores de la fauna tienen que navegar por un canal muy estrecho entre ambos grupos para proteger tanto a los cazadores como a los animales.

487

SÁPMI - NORUEGA

El portavoz más importante de los saami en Noruega, el Parlamento Saami, se ocupa de una serie de temas relacionados con la mayor parte de las áreas de la política. Estos temas serán finalmente presentados a la agenda política común del gobierno nacional de Noruega. Los diferentes aspectos de los derechos a la tierra tienen alta prioridad en el Parlamento Saami, así como los medios de subsistencia, cuestiones relacionadas con la presentación y desarrollo de la lengua saami y asuntos concernientes a los niños y la educación.

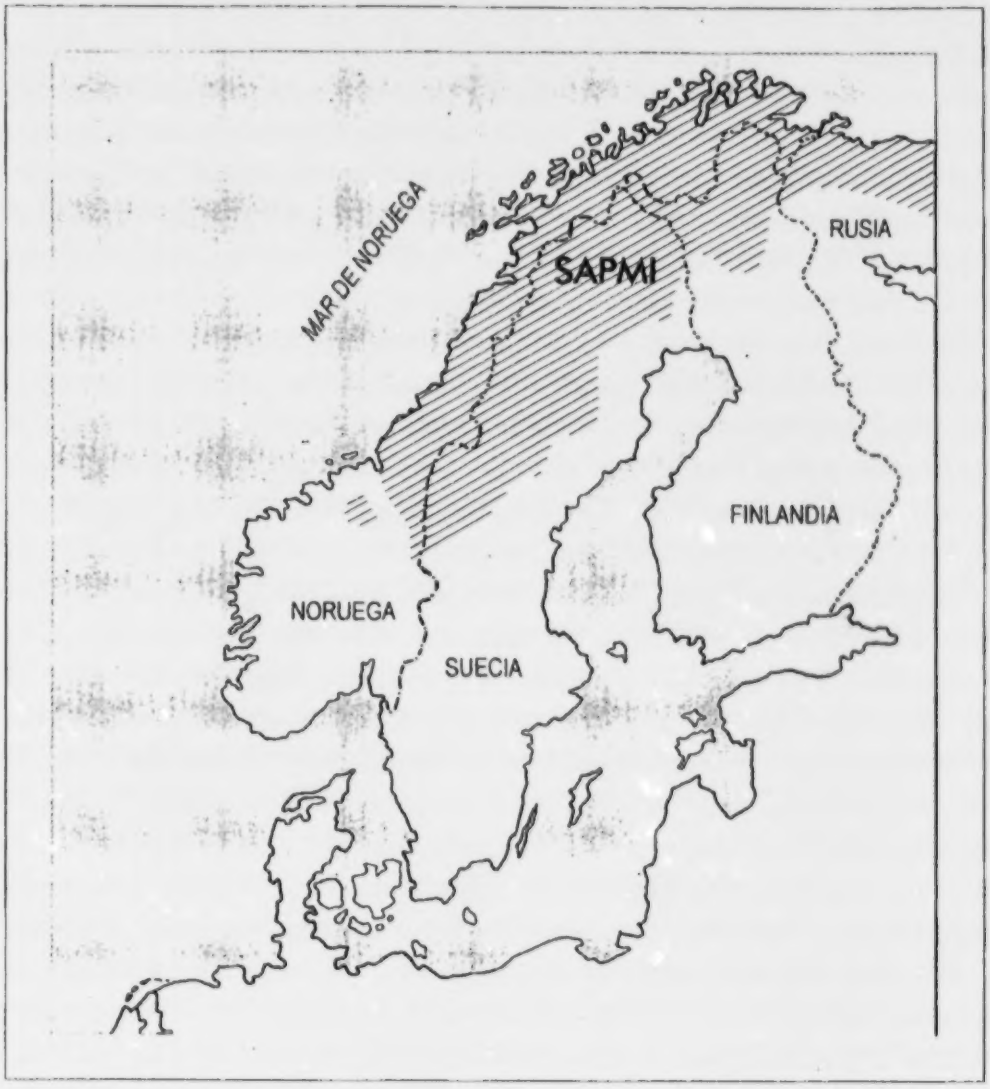
Elecciones

En septiembre de 2001 se celebraron elecciones para el Parlamento Nacional y para el Parlamento Saami. En el Parlamento Nacional, los partidos de la derecha obtuvieron la mayoría. Una coalición de tres partidos pertenecientes a una tradición política liberal formó un gobierno con el apoyo del partido derechista *Framskittspartiet* (Partido del Progreso) que tiene un enfoque negativo con respecto a las minorías étnicas en general y contra los derechos saami en su conjunto. En 1999, se fundó el *Samefolkets Parti* (Partido de los Pueblos Saami). Este partido participó en las elecciones para el Parlamento Nacional en el distrito electoral del condado de Finnmark, pero no tuvo éxito.

El Parlamento Saami es elegido el mismo día que el Parlamento Nacional. La Asociación Saami Noruega (NSR) logró retener su mayoría en alianza con otros tres partidos menores. La representación femenina en el Parlamento ha decaído constantemente desde su establecimiento. En esta última elección, la cantidad de mujeres representantes cayó del 27% (10 de 39) al 18% (7 de 39). Todavía no se han realizado investigaciones sobre las razones de esta decreciente representación femenina.

Derechos a la tierra

En 2001, el gobierno reestableció el Comité de Derechos Saami. El último Comité estaba examinando las reivindicaciones territoriales saami en el Condado de Finnmark. El mandato de este Comité es examinar los derechos saami en las áreas tradicionales saami al sur del condado de Finnmark e identificar estas áreas de acuerdo al Artículo 14-2 del Convenio No. 169 de la OIT. El Comité está integrado por 16 miembros, tanto saami como noruegos, y tiene que presentar su informe el 1 de julio de 2005.



En 2001, la Suprema Corte de Noruega se pronunció en dos casos que pueden considerarse como un momento decisivo que tendrán un impacto importante sobre el desarrollo futuro de los derechos saami.

La primera sentencia fue emitida el 21 de junio. El tema de la disputa era si en dos distritos (Essand y Riast/Hylling) los criadores de renos tenían derechos de pastoreo en áreas de propiedad privada en la periferia de la municipalidad de Selbu en el condado de Sør-Trøndelag. La Suprema Corte había sentenciado, en asuntos similares anteriores, a favor de los granjeros que están en contra de que los renos pastoreen en su tierra. Sin embargo, esta vez la Suprema Corte falló a favor de los criadores de renos, basándose en su uso continuo durante un largo período de tiempo histórico (*alders tid bruk*).

BEST COPY AVAILABLE

El 5 de octubre, la Suprema Corte de Noruega sentenció que los habitantes locales de Manndalen/Ommaivaggi, en el condado de Troms, tenían derechos de propiedad sobre el área de Svartskogen. El estado había reivindicado su propiedad sobre esta área de 116 kilómetros cuadrados. Los habitantes locales argumentaron que ellos habían usado el área como si la poseyeran y que nunca habían renunciado a este derecho. Otra vez, la decisión de la Corte se basó en su uso continuo durante un largo período de tiempo histórico y que este uso había sido practicado como si realmente fueran los propietarios. La Corte no creyó necesario tomar en consideración el Convenio 169 de la OIT pero destacó el hecho que la decisión estaba de acuerdo con el convenio.

Existe un conflicto actual sobre la actividad de las fuerzas armadas nacionales en las áreas de cría de renos de Mauken/Blåtind (condado de Troms) y Halkavarre (condado de Finnmark). En Halkavarre se realizó una manifestación pacífica de un día contra esta actividad en el otoño pasado.

En 1998 y 1999, se presentaron dos quejas a ESA (Autoridad Supervisora de EFTA, Asociación Europea del Comercio Libre) alegando que la legislación noruega relativa a la pesca con caña en corrientes interiores de agua por ciudadanos extranjeros estaba en contradicción con el Acuerdo Europeo del Area Económica (EEA). El 29 de junio ESA solicitó respuestas a preguntas específicas e información sobre la legislación noruega. En respuesta, el gobierno noruego destacó que la legislación noruega impugnada no caía dentro del ámbito del Acuerdo EEA. Por lo tanto, los extranjeros no tienen derecho a pescar en cursos de agua interiores como los ciudadanos noruegos.

Otros acontecimientos significativos

El ex Presidente del Parlamento Saami, profesor Ole Henrik Magga, fue nombrado representante por las áreas inuit y saami en el Foro Permanente de las Naciones Unidas para las Cuestiones Indígenas.

A pesar del hecho de que la legislación sobre educación da a los alumnos saami el derecho individual a la educación en lengua saami dondequiera que vivan en Noruega, varios casos han demostrado que este derecho es difícil de lograr en muchas comunidades.

El festival cultural saami Riddu Riddu celebró su décimo aniversario en 2001. Este festival tiene un distintivo perfil indígena ártico, por lo que otros pueblos indígenas son invitados a contribuir con sus expresiones culturales.

El 26 de noviembre, falleció uno de los más conocidos y perfilados artistas saami, a nivel comunitario e internacional, Nils Aslak Valke-

apää, perdiendo el pueblo saami a un artista sumamente especial y querido.

Referencias

Bull, Kirsti Strøm. 2001. " Nye høyesterettsdommer om samiske rettigheter". *Bårjâs 2001, Populærvitenskapelig tidsskrift fra Arran – lulesamisk senter.*
Ryel, Anne Lise. 2001. "Gjenoppnevning av samerettsutvalget". Ibid.
Nystø, Sven-Roald. 2001. "Retten til innlandsfiske i Finnmark – ESAs behandling av klagesak mot Norge". Nota 09.08.01. El Parlamento Saami de Noruega.
Suprema Corte de Noruega: http://www.hoyesterett.no/
Parlamento Saami de Noruega: http://www.samediggi.no/

SÁPMI - SUECIA

Este informe tiene como objetivo hacer una revisión de los acontecimientos de importancia para el pueblo saami de Suecia durante el año pasado. El pueblo saami también habita Finlandia, Noruega, y la Península de Kola en Rusia. Aunque este informe sólo cubre Suecia, varios de los acontecimientos mencionados más abajo son también relevantes para los miembros de la población saami que vive fuera de Suecia.

El derecho a la autodeterminación

Suecia estableció el Parlamento Saami, con el mandato de decidir sobre ciertos temas de importancia para el pueblo saami. El Parlamento Saami constituye un esfuerzo encomiable para concretar el derecho del pueblo saami a la autodeterminación. Sin embargo, este parlamento no tiene la autoridad para tomar decisiones sobre temas de suma importancia, como asuntos relativos a los derechos a la tierra y a los recursos naturales. El gobierno ha presentado recientemente un informe al parlamento sueco, señalando cómo, en la opinión del gobierno, Suecia está promoviendo los derechos humanos. En su informe, el gobierno reconoce que el pueblo saami es un pueblo indígena y que esto tiene implicaciones, p. ej., con respecto al derecho del pueblo saami a la autodeterminación. Queda por verse si este punto

de vista tendrá un impacto en la política futura del gobierno con respecto a los saami.

Además, el 14 de diciembre de 2001, un comité investigador gubernamental, *Rennäringspolitiska Kommittén*[1], presentó su informe con una propuesta para una nueva política de manejo de los renos. El informe contiene sugerencias sobre cómo equilibrar los intereses del pueblo saami con otras formas de subsistencia que se utilizan en el territorio tradicional saami. El informe incluye también algunas propuestas que aumentan la autodeterminación saami en cuestiones de real importancia para su pueblo. Por ejemplo, sugiere que el derecho a tomar decisiones sobre divisiones de áreas de pasturas de invierno entre diferentes aldeas saami debería ser transferido de las autoridades suecas al Parlamento Saami, al que también se le otorgó un mandato más amplio con respecto a algunos otros asuntos relativos a la cría de renos.

El Convenio No. 169 de la OIT y los derechos a la tierra del pueblo saami

A fines de 2001, el gobierno todavía no había respondido a las recomendaciones de su propia investigación relativa a la ratificación del Convenio No. 169 de la Organización Internacional del Trabajo (OIT), o a las críticas del Comité sobre la Eliminación de la Discriminación Racial (CERD)[2] en el año 2000 (ver *El Mundo Indígena 2000-2001*). En cambio, anunció que estaba esperando el resultado de las investigaciones realizadas por el *Rennäringspolitiska Kommittén*, antes mencionado. En su informe, el Comité incluye una serie de propuestas que fortalecerían los derechos a la tierra del pueblo saami, pero serán necesarias medidas más amplias si Suecia adhiere a las previsiones del Convenio 169 de la OIT.

Por lo tanto, hay signos de un posible fortalecimiento de los derechos a la tierra de los saami en el futuro. Sin embargo, mientras que estas propuestas estaban siendo evaluadas, los derechos a la tierra de los saami siguieron siendo menoscabados durante el 2001. En el caso de la planta energética *Vattenfall*, que presentó en 2000 una solicitud para ser registrada como propietaria de tres áreas de tierra separadas dentro del territorio saami (ver *El Mundo Indígena 2000-2001*), en diciembre de 2001, la Suprema Corte decidió no tratar la apelación de la sentencia por las partes saami en el primero de los tres casos. La sentencia de la Corte de Apelaciones sigue por lo tanto en pie y *Vattenfall* será registrada como propietaria de territorio tradicional saami. En una sentencia de enero de 2002, la Corte de Apelaciones llegó a la misma conclusión en el segundo de los tres casos.

La cría de renos es una de los principales medios de subsistencia de los saami. La práctica de la cría de renos es fundamental para preservar la cultura saami. Aunque no están reconocidos como propietarios de su tierra tradicional, por la legislación sueca, los saami pueden realizar sus actividades de cría de renos en áreas que han habitado *"desde tiempos inmemoriales"*[3]. No obstante, la legislación no define cuáles son estas áreas en la opinión del gobierno. Esta incertidumbre ha provocado varios conflictos, particularmente en las áreas de pastoreo invernales que hoy en día los saami comparten con la población no-saami. Hay siete casos pendientes ante las cortes suecas, en los que personas no-saami reclaman compensación a los criadores de renos debido al pastoreo de sus manadas en territorios sobre los que los no-saami tienen títulos de propiedad pero que también, de acuerdo a los criadores de renos, forman parte de las áreas tradicionales saami de pastoreo invernal.

Durante 2001, se nombró a un mediador para intentar llegar a una propuesta en la cual los criadores de renos acuerden pagar alguna compensación a los terratenientes por el pastoreo de los renos en "su" tierra. Si se llega a un acuerdo, el gobierno indicó que estaría dispuesto a compensar a los criadores de renos al menos en parte por estos costos. Es más, en diciembre de 2001, el gobierno sueco nombró un comité, que se necesitaba desde hacía mucho tiempo, con la tarea de investigar cuáles áreas constituyen territorios tradicionales saami. El objetivo es evitar más procesos judiciales con relación a qué tierras ha habitado el pueblo saami desde tiempos inmemoriales.

Mientras tanto, el 15 de febrero de 2002, la Corte de Apelaciones sueca falló en el primero de los siete casos. Al contrario de la Corte de Primera Instancia, la Corte de Apelaciones sostuvo que las áreas de tierra en cuestión no constituían territorio tradicional saami, y que los criadores de reno tendrían entonces que pagar compensación a los terratenientes por el pastoreo de renos en esa tierra. Obviamente, la sentencia tendrá efectos perjudiciales para la industria de la cría de renos. Lo que molesta más a la comunidad saami es la abrumadora carga de pruebas que las cortes han impuesto sobre las partes saami. Los criadores de reno intentaron explicar los prerrequisitos para la cría de renos, y que era casi imposible para una cultura que tiene la intención de vivir en armonía con la tierra y no dejar signos visibles de su presencia sobre la misma, probar su presencia en un área de tierra en particular. Las cortes no se dejaron convencer por este argumento. Un importante periódico sueco se refirió a la sentencia de la Corte de Apelaciones como "racista".

Junto con las demandas judiciales antes descritas, los animales predadores, como los lobos, carcayús, linces y osos marrones, siguen constituyendo las amenazas más severas para muchos criadores de

renos. Los saami han pedido desde hace largo tiempo fijar un tope de cuántas cabezas de renos muertos deberían lamentar cada criador y la necesidad de pagar una compensación adecuada por los renos muertos. Durante 2001 no hubo ningún progreso a ese respecto.

Derechos a la caza y a la pesca

Históricamente, los derechos de caza y pesca en las áreas que los saami habitan tradicionalmente les pertenecían solamente a ellos, y fueron regulados por primera vez en el siglo XIX. La Primera Ley de Pastoreo de Renos de 1886 transfirió el derecho a subcontratar los derechos a la caza y a la pesca de los saami al gobierno, por la razón de que los saami fueron considerados incapaces de administrar sus propios derechos de caza y pesca. A partir de entonces, las autoridades suecas administraron los derechos de caza y pesca de los saami durante casi 100 años. Luego, en 1992, el gobierno anunció súbitamente que ya no iba a subcontratar los derechos de los saami sino los derechos del **estado** a la caza y a la pesca. Los juristas se refirieron a esta regulación como una confiscación de los derechos a la caza y a la pesca de los saami. En las Observaciones Finales sobre Suecia en el año 2000, el CERD subrayó particularmente su preocupación sobre los derechos a la caza y a la pesca de los saami.

Cuando *Rennäringspolitiska Kommittén* presentó recientemente, su informe sobre esta cuestión, anunció que creía que sería mejor investigar los derechos a la caza y a la pesca separadamente. Por lo tanto, recomendó que se nombrara un nuevo investigador. Sin embargo, esta no será una investigación política. Ya que el investigador analizará la cuestión de los derechos a la caza y a la pesca de los saami únicamente desde un punto de vista legal.

Derechos culturales – la Ley de la Lengua Saami y la televisión saami

El gobierno sueco anunció recientemente que está considerando una expansión del ámbito de la Ley de la Lengua Saami[4] para aplicarla a toda el área saami siguiendo las críticas de, entre otros, el CERD.

Además, durante 2001, la televisión estatal sueca comenzó a emitir un noticiero diario saami. Las noticias emitidas en saami están subtituladas en sueco.

Notas y referencias

1 SOU 200:101 – *En ny rennäringspolitik – öppna samebyar och samverkan med andra markanvändare. Betänkande av Rennäringspolitiska Kommittén.*
2 CERD Document CERD/C57/CRP.3/Add.2
3 En sueco: *"urminnes hävd"*
4 En sueco: *Lag (1999:1175) om rätt att använda samiska hos förvaltningsmyndigheter och domstolar.*

SÁPMI - RUSIA

Los saami rusos han trabajado activamente en 2001 con asuntos políticos y culturales. Los saami, junto con la Duma Regional del Distrito de Murmansk han elaborado una ley de distrito (*oblast*) sobre el estatus legal de los pueblos indígenas del distrito de Murmansk. El 11 de julio, la Duma de la región de Murmansk adoptó una reglamentación sobre el territorio usado tradicionalmente por los saami y que debería ser reservado para ellos. En base a esa reglamentación, el territorio en torno al lago sagrado Sejdjaur fue declarado área protegida saami.

Gran parte del trabajo político y cultural fue realizado por la Organización Pública Saami de la Región de Murmansk (OOSMO) que ha cooperado con la organización danesa Infonor, la que ayudó a OOSMO a obtener una oficina y equipamiento.

El 23 de mayo fue presentada en Moscú por el ex líder soviético Mikhail Gorbachev la edición en ruso del informe investigativo *Patatas saami: viviendo con los renos y la perestroika*, de Michael P. Robinson y Karim-Aly S. Kassama. El financiamiento provino del Fondo Gorbachev y fue un proyecto en conjunto de los saami kola y canadienses. El informe ofrece una visión saami canadiense de cómo podría florecer la cogestión en la sociedad rusa posperestroika. Es la historia de la lucha de los saami para proteger sus tierras tradicionales y sus renos.

En 2001, el Centro Étnico de Lovozero organizó varios cursos y reuniones, por ejemplo, un curso para mujeres saami desempleadas y un curso de tallado en hueso, cuernos y madera con un profesor saami noruego. El Centro participó en un festival cultural en junio en Rovaneimi, Finlandia. También organizó una reunión de los ex habitantes de Vojonje, una aldea situada entre Lovozero y la costa norte, de donde fueron desplazados en los años 60 cuando la misma fue inundada a causa de una represa hidroeléctrica.

495

La pesca deportiva en los ríos saami continuó en 2001. Los ríos son arrendados a compañías pesqueras extranjeras por el costo de 4.300 a 7.900 dólares a la semana. La mayoría de los pescadores vienen de los EE.UU. y Escandinavia. Los saami están siendo prácticamente expulsados de los lugares de pesca en su propio territorio.

La situación de los criadores de reno fue peor que el año pasado. Esto se debe a las dificultades para vender la carne de reno. Muchos criadores perdieron su trabajo. Algunos criadores saami visitaron a colegas noruegos para observar su situación.

Los saami rusos están participando activamente en el trabajo de la Asociación de Pequeños Pueblos del Norte Ruso. La situación de los saami rusos puede ser resumida así: la vida económica está cada vez peor, la situación política sigue siendo la misma, y los asuntos culturales están mejorando.

LOS PUEBLOS INDIGENAS DE RUSIA

Los procesos sociales, económicos y ambientales en marcha en las áreas habitadas por comunidades indígenas han dado pruebas que los derechos e intereses de las comunidades de pueblos indígenas han sido ignorados tanto por el gobierno como por las autoridades locales.

Legislación y regulaciones federales

En octubre de 2001 fue abolido el Ministerio para los Asuntos de la Federación - Política Nacional y Regional, y sus funciones relativas a los pueblos indígenas fueron transferidas al Ministerio de Desarrollo Económico y Comercio. No se logró conformar una cooperación tangible con este Ministerio, ni con el Ministerio de Recursos Naturales. Todas las iniciativas de la Asociación de Pueblos Indígenas del Norte (RAIPON – la organización nacional que une a los pueblos indígenas de Rusia), en la esfera de la defensa de los derechos de los pueblos indígenas en el ámbito gubernamental se han ahogado en un aluvión de correspondencia burocrática.

Los derechos de los pueblos indígenas, delineados en la legislación federal, han sido violados sistemáticamente en las áreas en que habitan. Estas violaciones ocurren en base a un esquema muy com-

496

plicado y, desafortunadamente, en la mayoría de los casos no están sujetas a examinación judicial. El problema es que las autoridades locales están siendo primariamente guiadas en sus actividades prácticas por instrucciones temporarias emitidas por el gobierno en vez de por leyes federales. Estas instrucciones, pseudopromulgaciones impuestas, son de naturaleza provisional y contradicen la legislación federal existente. Sin embargo, probar esto ante la justicia y cancelar estas disposiciones, es una operación que requiere mucho tiempo y un apoyo jurídico sustancial.

Por ejemplo, en abril de 2001, el Comité Estatal de Pesca emitió una reglamentación relativa al ordenamiento que otorga licencias para pescar especies de peces anádromos sobre una base de licitación. Los litigantes se enfrentaron con exigentes demandas relativas a su organización de la pesca y su procesamiento. Los derechos de los pueblos indígenas a una licencia prioritaria no fueron mencionados en esa regulación a pesar del hecho de que habían sido previstos por la ley Federal "Sobre la Fauna".

Además, el mayor número de cuotas quedó en manos del estado, mientras que las regiones recibieron un número menor. Sin embargo son las regiones las que tienen que distribuir las cuotas entre los pueblos indígenas. Basadas en esta reglamentación gubernamental, las autoridades atribuyeron todas las cuotas en licitación e invitaron a participar a los pueblos indígenas. La mayoría de las comunidades y empresas indígenas no pudieron competir en términos de equipos con compañías pesqueras industriales sólidas y, por lo tanto, no obtuvieron ninguna licencia. Mientras que RAIPON trató de probar la falta de legitimidad de la reglamentación y el gobierno replicó que la misma no infringe los intereses de los pueblos indígenas, la estación pesquera (para pescar especies anádromas) de 2001 ya había terminado y los pueblos indígenas del Lejano Oeste se quedaron sin trabajo y sin pescados.

Territorios de "uso tradicional de recursos"

A pesar del pedido de las comunidades indígenas al gobierno con respecto a la formación de territorios de subsistencia tradicional, no se ha establecido ni un solo territorio de este tipo desde que la ley Federal *"Sobre territorios de uso tradicional de recursos (Territorios de Subsistencia Tradicional) de los pueblos numéricamente pequeños del Norte, Siberia y el Lejano Este de la Federación Rusa"*, entró en vigencia el 11 de mayo de 2001. Mientras tanto, el gobierno explica su inercia debido a "la no disponibilidad de leyes esenciales que regulen la orden de establecimiento de territorios de subsistencia tradicional

497

de significación Federal así como especificaciones sobre el sistema de reglas aplicables a su funcionamiento".[1] No hay ninguna indicación en la carta sobre por qué esas legislaciones de aplicabilidad no han sido formuladas y cuándo serán delineadas.

RAIPON, con la ayuda de abogados, preparó algunos proyectos para los estatutos aplicables necesarios y se los entregó al gobierno en octubre de 2001, pero hasta ahora la iniciativa de RAIPON está errante en los corredores de los escritos burocráticos.

Al mismo tiempo, en 2000 y 2001, durante el período de formulación y adopción de la antes mencionada ley Federal, los casos de rápida abolición de los territorios tradicionales de subsistencia ya existentes, se hicieron cada vez más frecuentes con la aprobación de las autoridades regionales.

En el Área Autónoma Evenk, por ejemplo, los documentos de 55 comunidades de parentesco relativos a su parcelamiento de tierras basado en el linaje de parentesco que se remontaba a 1992-1995 fueron declarados nulos e inválidos por una simple ordenanza No. 152 de fecha 23 de junio de 2000, emitida por el gobernador del Área. En la opinión de las organizaciones de pueblos indígenas del Área Evenk, esta decisión se debió al comienzo de la prospección de petróleo y gas en el Área. Sólo una comunidad parentelar logró obtener copias de documentos relativos al retiro de tierras parentelares y presentar una protesta, con la asistencia de RAIPON, contra la ordenanza ilegal. La decisión ilegal con respecto a esa comunidad fue revocada. Sin embargo, fue imposible obtener documentos relativos a las otras comunidades parentelares.

Ejemplos de las regiones

El retiro de tierras asignadas previamente a los pueblos indígenas es una flagrante violación de sus derechos al uso tradicional de recursos naturales. El Gobernador del Okrug Autónomo Koyak, emitió la ordenanza No. 60 el 14 de marzo de 2001, revocando la ordenanza No. 317 (1998) emitida por su antecesor, sobre "El Establecimiento del Territorio de Subsistencia Tradicional 'Tkhsanom' en el Distrito de Tigiliskiy del Área Autónoma Koryak". El Territorio de Subsistencia Tradicional Tkhsanom fue establecido en conformidad con la ley "Sobre Territorios de Subsistencia Tradicionales en el Área Autónoma Koryak" a solicitud de la Unión de Comunidades de Pueblos Indígenas y No-Nativos de las Aldeas de Kovran, Ust'-Khairyuzovo, Khairyuzovo y de acuerdo a la resolución No. 136 (1998) de la administración del Distrito de Tigiliskiy. La posibilidad de que un nuevo gobernador revoque un decreto anterior muestra la debilidad en la implementación de las leyes actuales.

498

Al mismo tiempo, está en marcha la construcción de un gasoducto de gas natural al sur del territorio Tkhsanom. La construcción del gasoducto comenzó en 1999 sin ninguna evaluación previa de impacto ambiental, audiencia pública o argumento y reconciliación con las organizaciones de pueblos indígenas. El gasoducto se extiende de norte a sur a través del territorio Tkhsnanom, cruzando las cuencas altas de más de cien ríos de desove y campos de caza conocidos por haber sido las áreas tradicionales de subsistencia de pueblos indígenas. Para impulsar esta construcción del gasoducto destinado a suministrar gas a Petropavlovsk-Kamchatskyi, la administración de la región de Kamchatka, con el consentimiento tácito del gobierno, violó todas las normas relativas a la observación de las reglas de seguridad ambiental, evaluación de impacto ecológico y los derechos de la población a ser informada. Las áreas costeras del territorio Tkhsanom y el área adyacente del Mar de Okhotsk son consideradas como zonas de prospección para la producción de petróleo y gas. El arrendamiento a una compañía maderera de una sección de los bosques de Samarga en el Territorio Primorskiy, en marzo de 2001, preservada desde 1991 como área étnica habitada por los udeges, constituye un caso similar a los anteriores ejemplos.

El 26% del territorio total del *Okrug* Autónomo Khanty-Mansi fue otorgado a comunidades parentelares de los khant y mansi en 1992-93 como tierras parentelares para uso gratuito y permanente con el derecho de arrendarlas a otros usuarios. Para el 1 de enero de 2002, el 47 por ciento de las tierras habían sido arrendadas a largo plazo a compañías perforadoras de petróleo. La población indígena, que recibió una compensación única por el arrendamiento de sus tierras en forma de trineos con propulsión a hélice, equipos de audio y radio, ahora se encuentra sin medios de subsistencia. La mayoría de la población está sin trabajo, viviendo como mendigos en las afueras de los pueblos y establecimientos industriales con la esperanza de recibir los prometidos apartamentos y compensación. Sus tierras nativas han sido desfiguradas por la prospección geológica, equipos de perforación e incendios forestales, y son inservibles para el uso tradicional de recursos naturales.

Código rural

En mayo de 2001, el parlamento adoptó el Código Rural de la Federación Rusa, prácticamente al mismo tiempo que la ley sobre uso tradicional de recursos naturales. El Código prevé el derecho a adquirir tierra como propiedad privada. El derecho prioritario de adquisición es otorgado a aquellos que ya tienen este u otro tipo de derecho para detentar parcelas de tierra. El proceso de legalización del arren-

damiento, prácticamente sin pago, por la tierra en uso industrial en territorios tradicionales de subsistencia de pueblos indígenas se hizo entonces extremadamente intenso en 2000 y 2001.

Desgraciadamente, los grupos de pueblos indígenas dispersos por todas las enormes y vastas áreas, aislados de los centros administrativos por cientos de millas de caminos intransitables, por lo general están desinformados sobre el estatus legal de sus tierras nativas. Siguen usando sus tierras y recursos naturales sobre la base del derecho tradicional. Sus padres y abuelos vivieron allí. Bajo los zares, sus tierras eran administradas por juntas de parentesco, bajo el poder Soviético fueron incorporadas a granjas colectivas y estatales. Luego, se convirtieron en tierras de comunidades parentelares. Ahora pueden transformase en propiedad privada o propiedad en arriendo a largo plazo por parte de compañías extractivas.

En la actualidad, las comunidades indígenas, frecuentemente sin saberlo, están involucradas en una ardua competencia con el capital privado por sus tierras y recursos naturales. Desdichadamente, no ha habido un apoyo tangible del estado, al menos no en la forma de implementación de leyes relativas a los derechos de los pueblos indígenas.

Las *subjekty* (provincias) del norte, de Siberia y del lejano este de la Federación Rusa

1. Murmanskaya Oblast
2. Nenets Okrug Autónomo
3. República de Komi
4. Yamal-Nenets Okrug Autónomo
5. Khanty-Mansi Okrug Autónomo
6. Taymyr Okrug Autónomo
7. República de Sakha-Yakutia
8. Chukotsky Okrug Autónomo
9. Koryaksky Okrug Autónomo
10. Kamchatkskaya Oblast
11. Magadanskaya Oblast
12. Khabarovsky Kray
13. Primorsky Kray
14. Sakhalinskaya Oblast
15. Evreyskaya Oblast
16. Amurskaya Oblast
17. Aginsky Buryatsky Okrug Autónomo
18. República de Buryatia
19. Ust-Ordynsky Buryatsky Okrug Autónomo
20. Evenkisky Okrug Autónomo
21. Altaisky Kray
22. Krasnoyarsky Kray
23. República de Altai
24. República de Tyva
25. República de Hakassia
26. Kemerovskaya Oblast
27. Novosibirskaya Oblast
28. Tomskaya Oblast
29. Omskaya Oblast
30. Tyumenskaya Oblast
31. Sverdlovskaya Oblast
32. Moscú
33. San Petersburgo
34. Arkhangelskaya Oblast
35. República de Karelia

BEST COPY AVAILABLE

Los proyectos de organizaciones indígenas que están financiados a través de la colaboración extranjera posibilitan a los representantes de los pueblos indígenas adquirir la información legislativa necesaria, al menos parcialmente, durante talleres y cursos, para saber cómo defender sus derechos, obtener información sobre formas posibles de desarrollo comunitario y compartir información sobre problemas ambientales en sus regiones. Sin embargo, estos proyectos están lejos de poder cubrir el espectro completo de actividades relacionadas con la defensa de los derechos de los pueblos indígenas. Estos derechos no están suficientemente reflejados en la legislación federal. Se requiere un esfuerzo considerable para su mejora y difusión tomando debidamente en cuenta las propuestas que provienen de los mismos pueblos indígenas.

Hay mucho trabajo por delante en el Parlamento. Las comunidades de pueblos indígenas están demasiado disgregadas, las distancias son demasiado grandes y las condiciones y problemas de las regiones difieren demasiado. En las regiones debe haber muchos más talleres, cursos de capacitación, centros de información local y líderes con experiencia. Los pueblos indígenas de Rusia han entrado en una nueva fase de su desarrollo: se les ha otorgado derechos admitidos por la ley y ahora deben aprender cómo usarlos en la práctica y cómo defenderlos en caso de necesidad.

El trabajo de RAIPON

Los años 2001 y 2002 han sido sumamente contradictorios para los pueblos indígenas del Norte, Siberia y el Lejano Oriente.

Por una parte, el movimiento de pueblos indígenas, a través de RAIPON, ha ganado un mayor grado de reconocimiento entre las autoridades estatales de Rusia. En abril de 2001, RAIPON convocó a su 4º Congreso en el Palacio Presidencial en Moscú, con la asistencia de más de 400 delegados de todas las áreas habitadas por pueblos indígenas. Los representantes de todos los organismos estatales, el gobierno y el parlamento dieron discursos que se asemejaban más a informes que exponían sus esfuerzos para el bienestar de los pueblos indígenas.

La dirección de RAIPON ha sido recibida al más alto nivel en los Ministerios de Desarrollo Económico y Comercio, y de Asuntos de la Federación, Política Nacional y Regional. A nivel gubernamental, se ha llegado a acuerdos con los antes mencionados Ministerios y RAIPON relativos a su cooperación. En diciembre de 2001, el Presidente de RAIPON, S. N. Kharyuchi, recibió la Orden de la Amistad personalmente de manos del Presidente de Rusia V.V. Putín.

502

Nota y fuente

1 Cita de la carta no. 29/22-1 de fecha 1 de enero de 2002, escrita por el Primer Ministro Adjunto de Desarrollo Económico, Sr. I.S. Materov al presidente de la Asociación de Pueblos Indígenas del Norte, Siberia y el Lejano Oriente, Sr. S.N. Kharyuchi.

"Mir korennykh narodov – Zhivaya Arktika" nos. 5, 6-7 y 8, 2001 es la fuente general de este capítulo.

CHUKOTKA

El 24 de diciembre de 2000, la Región Autónoma de Chukotka en el lejano oeste de Rusia experimentó un cambio en el poder regional y administrativo. Previamente administrada bajo los auspicios del autocrático gobernador, Aleksandr Nazarov, la región está ahora gobernada por Roman Abramovich. No obstante, queda por verse si la situación de los residentes indígenas de la región mejorará, dado que el nuevo gobernador ya ha asumido una serie de roles diferentes.

En primer lugar, Roman Abramovich es la más reciente manifestación de altruismo y de solicitud en Chukotka. En verano de 2000, pagó para que cientos de niños indígenas de comunidades empobrecidas pasaran los dos meses de verano de sus vacaciones escolares en campamentos bien instalados en el Mar Negro. Aviones a reacción volaban constantemente entre Anadyr' y el Mar Negro, financiados por su riqueza personal. El nuevo gobernador envía también "ayuda humanitaria" en forma de alimentos, vestimentas y zapatos, pero también velas y cañas de pescar, a aldeas chkuchki en Chukotka. Sin embargo, hay un artículo que Roman Abramovich no quiere dar: dinero. Sin embargo es justamente esto, argumentan los residentes indígenas, lo que necesitan tan urgentemente. El dinero no compra solamente productos y alimentos, también compra herramientas técnicas y artefactos mecánicos que podrían ayudarlos a revitalizar sus propias actividades generadoras de ingreso, por ejemplo, la cría de renos.

¿Por qué está Roman Abramovich proveyendo toda esta "asistencia"? Una mirada a su segunda encarnación podría darnos la respuesta. En Rusia, y particularmente en Chukotka, Abramovich es más conocido como uno de los oligarcas rusos: los beneficiarios

503

claves del reinado económico de los pocos que han decidido el destino económico de Rusia desde comienzos de los años 90. Junto con otros miembros de esta elite económica, alcanzó su apogeo en 1996 cuando "los oligarcas" recibieron importantes tajadas de propiedad estatal a precios extraordinariamente bajos a cambio de su decisión colectiva de firmar y financiar la campaña de reelección de Yeltzin. Esta movida garantizó la apoteosis de Abramovich como "barón del petróleo". Actualmente posee más del cincuenta por ciento de las acciones de Sibneft (Petróleo Siberiano) una de las compañías más poderosas de Rusia. Aunque muchos residentes indígenas se sienten agradecidos por la ayuda que provee Abramovich, hay también creciente preocupación de que quiera explotar las ricas reservas petrolíferas de Chukotka sin consultar con las comunidades que viven en estas tierras.

En este voluble entorno político, es bastante peligroso para la población indígena de Chukotka argumentar por justicia social y autodeterminación. Aún cuando el nuevo gobierno ruso democratizado ha abierto debates sobre temas de derechos a la tierra y reformas legales, el gobierno de Chukotka ha continuado usando tácticas de intimidación para amenazar a los indígenas críticos. Y aunque el actual gobierno regional desaprueba esas prácticas, frustra igualmente las aspiraciones de mayor justicia social y derechos, generando relaciones de dependencia. Desde la democratización, uno de los temas fundamentales para la organización de las fuerzas indígenas de la región de Chukotka se organicen ha sido la búsqueda de posibilidades políticas en un entorno que trata de silenciar o socavar los debates indígenas. En la península de Chukotka, algunos de los temas más apremiantes para los pueblos indígenas son la pobreza, los derechos a la tierra y la participación comunitaria. Desde la posición ventajosa del presente, los desafíos son formidables. Muy probablemente habrá una variedad de futuros y vías antes de poder proclamar la justicia social indígena en Chukotka.

ALASKA

De los 630.000 habitantes del estado de Alaska, aproximadamente el 16% es indígena, perteneciente a diferentes grupos atabascanos, inuit (yupik e inupiak), aleut y tinglit. Las comunidades inuit y aleut están ubicadas en la costa o a lo largo de los ríos más impor-

504

tantes, las comunidades atabascanas en el interior y los tinglit a lo largo de la costa sudoriental.

En 1979 se estableció la Ley de Acuerdo de las Reivindicaciones Nativas de Alaska (ANCSA), otorgando ciertos derechos a los pueblos indígenas a cambio de la extinción de los derechos aborígenes a la tierra y territorios. Bajo ANCSA, los pueblos indígenas poseen ("título de dominio absoluto") el 11% de la masa territorial del estado de Alaska. Los beneficiarios son miembros de corporaciones aldeanas y regionales que poseen la superficie y (corporaciones regionales) el subsuelo. Las corporaciones han estado involucradas en la explotación petrolera, la explotación maderera, el turismo, inversiones en propiedad y muchas han sustentado las actividades educativas y culturales de sus miembros. Las comunidades indígenas tienen sus propios gobiernos tribales. Su jurisdicción está limitada a ciertas áreas legales, culturales y sociales y no incluye derechos concernientes a los territorios como tales. Algunas comunidades indígenas que tenían estatus de reserva indígena decidieron en 1979 no formar parte de ANCSA sino mantener su estatus especial.

Líderes tribales de Alaska firman el Acuerdo del Milenio con el Estado de Alaska

Representantes de más de 80 tribus indígenas de Alaska reconocidas federalmente firmaron un acuerdo con el Estado de Alaska el 11 de abril de 2001, en el cual se elaboró un marco para el trabajo conjunto de las tribus y el estado sobre una base de "gobierno a gobierno". El documento, llamado el "Acuerdo del Milenio", posibilita a las tribus y el estado a trabajar juntos para mejorar el suministro de servicios esenciales a las aldeas nativas.

Durante muchos años, el Estado de Alaska se negó a reconocer la existencia de tribus en Alaska a pesar de su reconocimiento por parte del gobierno federal, que mantiene una relación gobierno a gobierno con las tribus reconocidas de Alaska. En base a esta relación las tribus reciben muchos millones de dólares de dinero federal para el suministro de una amplia gama de programas de salud y servicio social.

En 1993, Ada Deer, la Secretaria Asistente del Interior para Asuntos Indios de la administración de Clinton, reconoció oficialmente a 227 tribus de Alaska. Esta acción fue seguida por una ley del Congreso de los EE.UU., en 1994, que ratificó la existencia de las tribus. En el año 2000, la Suprema Corte de Alaska revirtió una posición muy antigua y reconoció la existencia de tribus reconocidas federalmente. "Con este acuerdo comienza una era totalmente nueva de relaciones Tribales-Estatales basadas en los principios de mutuo respeto y reco-

505

nocimiento", dijo el Gobernador de Alaska, Tony Knowles, durante la ceremonia de la firma. "Despliega cuidadosamente un marco para una colaboración efectiva y ordenada, trabajando juntos para satisfacer mejor las necesidades de los habitantes de Alaska, especialmente aquellos que viven en Alaska rural. Con este acuerdo, reconocemos algo que los líderes tribales saben desde tiempos inmemoriales porque sus gobiernos son la expresión moderna de las entidades más antiguas y continuas de América del Norte".

"Este es un momento histórico para las tribus", dijo Mike Williams, Presidente del Consejo Intertribal de Alaska. "Esta es la primera vez que hay una relación funcional establecida para mejorar la calidad de vida de nuestras comunidades tribales. Abre la oportunidad al estado y a las tribus para hacer algo con respecto a los problemas de nuestras comunidades".

El 10 de diciembre de 2001, los líderes de la Legislatura del Estado de Alaska solicitaron a Gale Norton, el Secretario del Interior de la administración Bush, para que revisara la política federal relativa a los nativos de Alaska. Argumentan que el Congreso ha establecido una "política nativa para Alaska que es bastante diferente de la política Nativa Americana que el Congreso estableció para los 48 estados contiguos". El fundamento de sus reclamos es la Ley de Acuerdo de las Reivindicaciones Nativas de Alaska de 1971, en la que se requería a los nativos de Alaska que formaran corporaciones patrocinadas por el estado para obtener el acuerdo. En su solicitud al Secretario Norton, los líderes de la legislatura estatal expresan que no creen que el Congreso tenía la intención de que las aldeas nativas de Alaska fueran reconocidas como tribus que constituyen "entidades políticas distintas cuyos organismos de gobierno poseen autoridad gubernamental e inmunidad soberana".

El Gobernador de Alaska renuncia a apelar en el caso Katie John

En un cambio total con respecto a su posición previa, el Gobernador de Alaska, Tony Knowles, anunció en agosto de 2001 que el Estado de Alaska no apelaría ante la Suprema Corte de los EE.UU. para revocar la sentencia de la Corte de Apelaciones del Noveno Circuito en el prolongado caso Katie John.

El 8 de mayo de 2001, la Corte del Noveno Circuito falló en el caso, *Katie John v. el Estado de Alaska*, que Katie John, una abuela ahtna atabascana de 86 años de edad, tenía derecho a continuar con su pesca de subsistencia en su campamento cerca de las fuentes del Río Copper como había hecho la mayor parte de su vida. La sentencia del

Noveno Circuito dejó sólo una opción al Estado de Alaska, apelar a la Suprema Corte de los EE.UU. Se otorgó una extensión de la fecha límite para realizar esa apelación, hasta el 4 de octubre de 2001.

En julio, el gobernador Knowles visitó a Katie John en su campamento de pesca. La visita, ampliamente publicitada, pareció ser un punto decisivo en este caso. La articulada y franca abuela, quien, viviendo una vida tradicional nunca había aprendido a leer o escribir, presentó su caso directamente al gobernador. "Este asunto de la subsistencia, le digo. Usted sabe, nosotros antes teníamos la ley india. En esos días, no veíamos al hombre blanco o pueblos blancos. Alaska era sólo de nativos. Todos diferentes nativos en Alaska. Tenían su propia ley para su caza, su aldea, todos tenían su propia ley diferente. La gente siempre se ayudaba mutuamente", dijo al gobernador.

El 21 de agosto de 2001, más de 4.000 personas marcharon por las calles de Anchorage, la mayor ciudad de Alaska, en apoyo de Katie John y exhortaron al gobernador Knowles a no apelar contra la decisión ante la Suprema Corte. Las encuestas continuaron mostrando que la mayoría de ciudadanos de Alaska, nativos y no-nativos, apoyaban el derecho de las personas que dependen de alimentos de subsistencia a tener prioridad sobre esos alimentos en tiempos de escasez.

"Este caso ha estado en la justicia durante 10 años, y el Estado lo perdió cinco veces", dijo Knowles. "Esto incluye tres apelaciones que presentó mi administración, una de las cuales fue ante la Suprema Corte de los EE.UU.".

"No me puedo oponer en la corte a lo que mi corazón sabe que está bien", dijo Knowles. "Yo sé –todos sabemos- que lo que hace Katie John no es incorrecto".

Los líderes de la legislatura del Estado de Alaska fracasaron en su intento de apelar a la Suprema Corte de los EE.UU., a pesar de la decisión del gobernador de no hacerlo porque se falló que sólo el gobernador tiene la posición de apelar el caso.

Ataques con bolas de pintura contra nativos de Alaska sin hogar escandalizan a los alaskenses

Un ataque contra nativos de Alaska sin hogar en Anchorage, en enero de 2001, sacudió a Alaska y a todos los EE.UU. Tres jóvenes blancos conducían por las calles de Anchorage buscando nativos para dispararles con rifles que lanzan bolas de pintura, disparando bolas de pintura congeladas. Los tres grabaron en vídeo los ataques con su propio comentarios. Una voz en el vídeo, hecha pública después de que la cinta fue confiscada por la policía, decía que estaban cazando "...esquimales...conocidos también como muktuks".

507

Una de las víctimas, un hombre nativo sin hogar que estaba caminando por la vereda recibió varios disparos con bolas congeladas de pinturas. Cuando se quejó a la policía fue arrestado y acusado por conducta desordenada. Como resultado pasó 10 días en prisión. Luego presentó una demanda judicial contra los jóvenes y sus padres.

El incidente atrajo la atención nacional contra el racismo en Alaska y la CNN y otras redes nacionales fueron a Alaska a cubrir el caso. El incidente hizo que el gobernador de Alaska nombrara una comisión especial sobre tolerancia y la Comisión sobre Derechos Civiles celebró audiencias públicas sobre racismo y crímenes de odio en Alaska.

El Refugio Nacional Ártico de la Fauna (ANWR)

La Ley de Conservación de Tierras de Interés Nacional de Alaska (ANILCA) fue finalizada en diciembre de 1980 y designó la Llanura Costera de 1,5 millones de acres dentro del Refugio Nacional de la Fauna Ártica (ANWR), como área de estudio para evaluar su potencial de desarrollo para la explotación de petróleo y gas. La evaluación de recursos, realizada por el Departamento del Interior, fue publicada en 1987 y recomendó que el Congreso abriera la Llanura Costera para la prospección y explotación de petróleo y gas. En 1995, el Congreso y el Senado de los EE.UU. aprobaron el Desarrollo de la Llanura Costera como parte de una ley de equilibrio presupuestario pero todo el procedimiento fue vetado por el Presidente Clinton.

Durante 2001, hubo intensas discusiones sobre una nueva legislación sobre energía en los EE.UU. La ley plantea más perforaciones en busca de petróleo y gas, nuevas medidas conservacionistas y mejora de la infraestructura energética. Una de sus propuestas más polémicas es la perforación en el Refugio Nacional de la Fauna Ártica (ANWR). Las discusiones incluyeron diferentes opiniones sobre el riesgo sustancial para el caribú y otros animales salvajes. La manada de caribú puercoespín que está en áreas de reproducción en el ANWR fue el centro de la disputa y preocupación de muchos pueblos indígenas del interior de Alaska y Canadá. Sin embargo, la disputa también incluyó los argumentos de algunas comunidades indígenas que ellos deberían poder desarrollar sus tierras de propiedad privada si la ley de energía era promulgada.

En agosto de 2001, el plan nacional de energía fue aprobado por el Congreso, controlado por los republicanos. Sin embargo, la ley se enfrentó a una fuerte oposición de los senadores demócratas y hubo un intenso trabajo de lobby por las partes pro- y anti-perforación en Washington durante todo 2001 y comienzos de 2002. El 18 de abril, el Senado votó por mantener al Refugio Nacional de la Fauna Ártica libre de perforación petrolera.

508

Fuentes

Grupo de Trabajo sobre Relaciones Estatales-Tribales.
Carta al Secretario del Interior del Presidente de la Legislatura del Estado de Alaska y Portavoz de la misma.
Federación de Nativos de Alaska.
Programa Rural de Acción Comunitaria de Alaska.
Oficina del Gobernador, Estado de Alaska.

NUNAVUT

El territorio de Nunavut cubre la región Ártica Oriental de Canadá y fue creado por el acuerdo de reivindicación de tierras entre los inuit del territorio y Canadá. Entró en existencia en abril de 1999 (ver también *El Mundo Indígena 1999-2000* y *2000-2001*). El Gobierno de Nunavut es un gobierno público que representa a todas las personas que viven en Nunavut. Los derechos y responsabilidades acordados a los inuit por el Acuerdo de Reivindicaciones de Tierra de Nunavut de 1993 son administrados por la organización representativa inuit llamada Nunavut Tunngavik Incorporated (NTI). La dirección de NTI es elegida por los inuit, y todos los residentes de Nunavut (inuit y no-inuit) votan los miembros de la Asamblea Legislativa de Nunavut.

El gobierno de Nunavut

El año 2001 fue un año de consolidación para el nuevo Gobierno de Nunavut. Sus diez departamentos siguieron empleando funcionarios, estableció oficinas descentralizadas en diez comunidades fuera de Iqaluit (la capital), suministró una amplia gama de programas y servicios y revisó su legislación y políticas para determinar dónde se requerían cambios más urgentemente (la elaboración de una Ley de la Fauna de Nunavut "hecha en Nunavut", por ejemplo). Pocos de estos esfuerzos generaron titulares – al menos no fuera de Nunavut. Por ejemplo, la Corporación Energética Nunavut entró en funciones y asumió la responsabilidad de la generación de electricidad en las comunidades de Nunavut. Este no es el tipo de historias que encienden la imaginación de los editores de periódicos pero es precisamente el tipo de desarrollo institucional que implica el autogobierno.

509

Entre los temas que dominaron la discusión pública se encuentra la calidad de los programas de educación y salud del territorio, los esfuerzos para incorporar el *Inuit Qaujimajatuqangit* (conocimiento tradicional inuit) en la actividad de gobierno (ver también *El Mundo Indígena 2000-2001*), el progreso limitado en el incremento del porcentaje de empleados inuit que trabajan para el gobierno, el cambio de las tres zonas horarias a una sola que abarque todo Nunavut (que fue finalmente abandonado) y el comienzo de una facultad de derecho para 15 estudiantes inuit. La Comisionada de Lengua, Eva Arreak, pidió una nueva ley de lengua que requeriría que todos los carteles de negocios y señalización de caminos, los documentos utilitarios y las prescripciones médicas fueran escritos en inuktitut, en adición a cualquier otro idioma.

El Premier Paul Okalik y su gabinete salieron bastante incólumes de una revisión de su gobierno a mediados de su mandato, y parecería que permanecerá en actividad hasta la segunda elección de Nunavut – que se espera será en noviembre de 2003.

Las organizaciones inuit

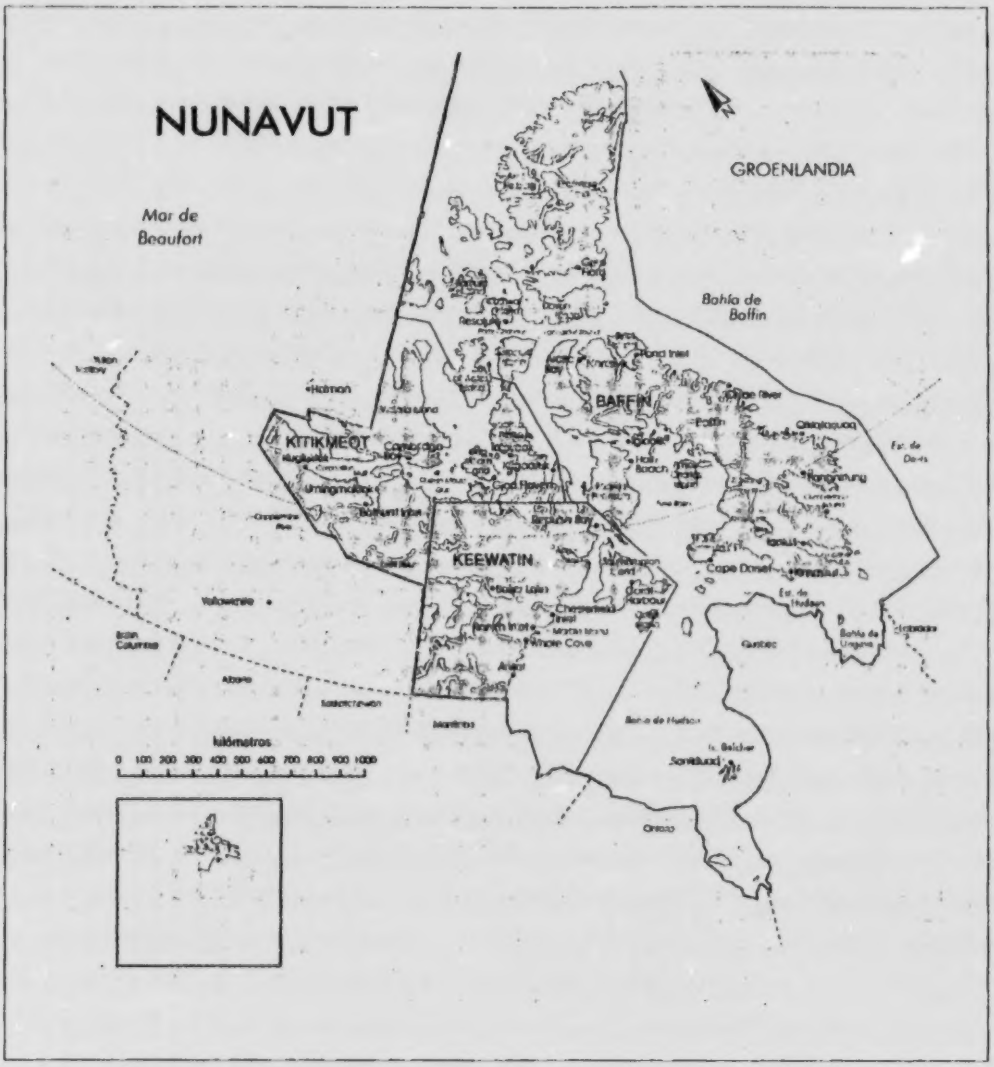
2001 fue un poco más problemático para varias de las organizaciones representativas inuit.

Paul Quassa renunció como Presidente de NTI después que se descubrió que había hecho uso personal de tarjetas de crédito y cartas bancarias de la corporación. Cathy Towtongie, de Rankin Inlet, fue electa por los inuit de Nunavut para reemplazar a Quassa, convirtiéndose así en la primera mujer en encabezar la NTI.

En una elección en que solamente el 45 por ciento de los votantes legitimados se molestaron en votar, ella derrotó por poco margen al político inuit de prolongada actuación, John Amagoalik, quien es usualmente llamado "el padre de Nunavut".

Mientras que NTI estaba dando la bienvenida a su primera Presidenta, la Junta de Directores de la Asociación Qikitani Inuit (QIA), que representa los intereses de los inuit de la región de Baffin, expulsó a la primera mujer Presidenta de QIA. El comportamiento errático de Meeka Kilabuk había planteado cuestionamientos sobre su capacidad para conducir a la luchadora organización aunque no había hecho nada ilegal o inmoral. El hecho de que la Junta de Directores, compuesta sólo por hombres, la retiró de sus funciones cuando los pecados de tantos políticos masculinos han sido perdonados durante años, condujo a los observadores a especular que su verdadero delito era que no formaba parte del "club de muchachos regionales".

510



Desarrollo económico

Las noticias económicas en Nunavut fueron en general deprimentes: la Suprema Corte de Canadá rechazó la apelación de NTI contra una decisión de una corte inferior que sostuvo la adjudicación del gobierno federal de cuotas de rodaballo en la Bahía de Baffin y el Estrecho Davis. Los intereses de Nunavut reciben apenas el 27 por ciento del total de pesca permisible en las aguas adyacentes a Nunavut. Un principio del manejo de la pesca de Canadá es que una proporción significativa de las cuotas otorgadas para cualquier especie es adjudicada a compañías basadas en la provincia o territorio que estén más próximas a donde residen las especies. NTI consideró que la decisión del gobierno federal de dar el grueso de las cuotas a intereses de la

BEST COPY AVAILABLE

parte atlántica de Canadá violaba el requisito de la reivindicación de tierras de consultar a NTI sobre las adjudicaciones de este tipo, pero la justicia dictaminó que la consulta había sido correcta.

First Air cesó su servicio semanal de aviones jet entre Iqaluit y Kangerlussuaq (Groenlandia), dejando a Nunavut sin ningún servicio aéreo programado para su vecino del este. Esto no sólo limitará la oportunidad de desarrollo comercial entre Nunavut y Groenlandia sino que, como resultado, incluso los intercambios más básicos entre los dos gobiernos serán mucho más difíciles (y onerosos).

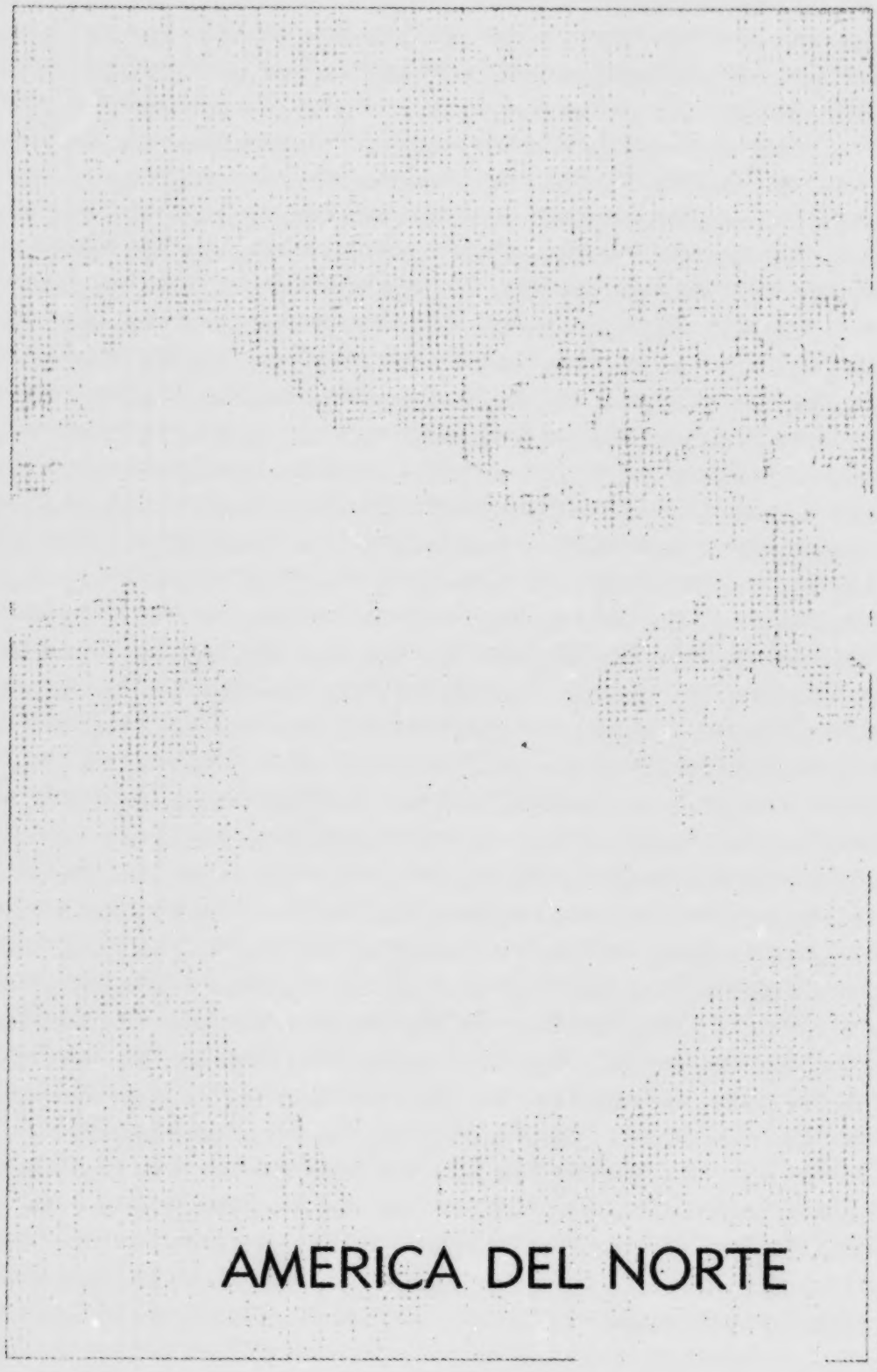
Y Breakwater Resources anunció que su mina de zinc/plomo de Nanivisik, que ha operado cerca de Arctic Bay en el norte de la Isla de Baffin desde 1974, cerraría en septiembre de 2002 – varios años antes de lo previsto. El desempleo sigue siendo un enorme problema en Nunavut, y con un gran número de adolescentes que están por integrarse a la fuerza laboral, la situación sólo puede agravarse. Otras partes de Canadá solicitaron frecuentemente una inversión pública significativa en infraestructura para alentar el desarrollo de un sector privado viable. El Gobierno de Nunavut y las organizaciones representativas están abogando ante el gobierno federal para que invierta en el futuro de Nunavut, como invirtió en el resto del país en épocas anteriores.

Dicho esto, se continúa realizando un alto nivel de prospección de oro y diamantes y metales básicos en las regiones de Kitikmeot y Keewatin y es posible que en varias propiedades se pueda comenzar la producción en los próximos años.

Película inuit en las noticias internacionales

Quizá el momento más brillante en Nunavut en 2001 fue cuando se estrenó *"Atanarjuat"* ("El Corredor Rápido"), la primera película realizada por inuit – que rápidamente acaparó la atención del mundo cinematográfico. Una foto del director Zach Kunuk de Igloolik, aceptando el ambicionado premio *Camera d'Or* en el festival de cine de Cannes apareció en la primera página de casi todos los periódicos más importantes de Canadá. La película fue recibida con éxtasis en las comunidades de Nunavut y ahora está siendo distribuida tanto nacional como internacionalmente. *"Atanarjuat"* ha inmerso y compenetrado a Canadá y al mundo en la cultura inuit de la forma en que sólo puede hacerlo una gran película. *"Atanarjuat"* es una fuente de gran orgullo para Nunavummiut, que ya está esperando la próxima película de Zach Kunuk – que se centrará en las relaciones entre los inuit y los primeros residentes no-inuit de Nunavut, los sacerdotes, los comerciantes y la policía.

512



BEST COPY AVAILABLE

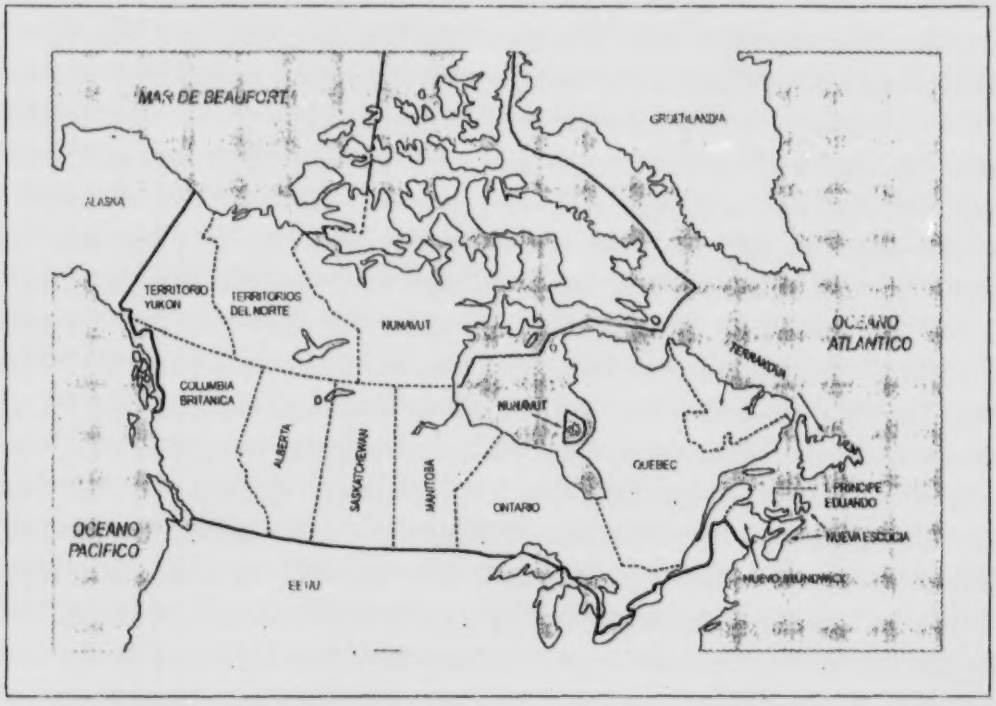
La Iniciativa de Gobierno de las Primeras Naciones

El segundo artículo sobre Canadá, en *El Mundo Indígena 2000-2001*, fue dedicado a la *Ley de Gobierno de las Primeras Naciones* y a la *Ley de Instituciones Financieras de las Primeras Naciones*. En ese artículo, Russell Diabo resumía estas propuestas de enmienda a la ley federal canadiense relativas al estatus legal de las Comunidades "Indias", presentadas por Robert Nault, el Ministro de Asuntos Indios y Desarrollo del Norte. Después Nault ha anunciado que en 2002 podrían ser introducidas aún más leyes complementarias. El paquete de enmiendas y leyes nuevas ha sido llamado la *Iniciativa de Gobierno de las Primeras Naciones (FNGI)*.

Dos factores esenciales continúan sin cambios en 2002 como se describió en el anuario del año 2001:

1. La adopción de este paquete re-escribiría el estatus de las Primeras Naciones y cambiaría adicionalmente la relación de los Jefes y Consejos con sus comunidades. Al mismo tiempo, limitaría la responsabilidad legal del gobierno federal (la Corona en derecho de Canadá) por violación repetida y continua de sus deberes fiduciarios como han sido establecidos en la legislación histórica y en decisiones de corte que van desde la decisión *Guérin* de 1985 (donde la Suprema Corte de Canadá concluyó que la Corona tiene el derecho fiduciario legalmente obligatorio o un tipo de fideicomiso para actuar en los mejores intereses de las Primeras Naciones); hasta al caso de la *Junta Escolar Cree* de 2001 (en que la Corte de Apelaciones de Québec criticó al gobierno federal y al de Québec por ignorar una vez más los términos del *Acuerdo de James Bay y Norte de Québec* que, entre otras cosas, garantiza que la Junta Escolar Cree debería ser parte de cualquier decisión que afecte la educación cree).
2. Las organizaciones políticas de las Primeras Naciones de Canadá han expresado su firme oposición a la *FNGI*, identificándola como un programa que renueva el colonialismo e ignora las recomendaciones claves de todas las investigaciones públicas sobre las relaciones de las Primeras Naciones en Canadá, particularmente el *Informe Penner* de 1983 y el *Informe de la Comisión Real sobre Pueblos Aborígenes* de 1996, y un Informe del Senado de 2000 titulado *Forjando Nuevas Relaciones*. Cada uno de estos informes previos había establecido fundamentalmente planes complementarios para implementar un tipo provincial de autogo-

514



bierno para las Primeras Naciones dentro de la Confederación Canadiense. Sin embargo, el nuevo programa requerirá que las Primeras Naciones se gobiernen a sí mismas a través de un sistema complejo de democracia directa que ningún gobierno territorial o provincial de Canadá encontraría funcional. "Primero las Comunidades", como se llama a esta declaración del gobierno, argumenta que los ministros se centrarán en el bienestar de las comunidades y no dedicarán tanto esfuerzo a los derechos legales que enfatizan los líderes de las Primeras Naciones. Este es un argumento doblemente ofensivo. Sin jurisdicción o autoridad legal otorgada por el Parlamento, el ministro no puede hacer nada. No tendría ni una oficina. Ya desde el surgimiento del autoritarismo colonial, pero particularmente desde el *Libro Blanco* de 1969, en que el gobierno de Trudeau y el entonces Ministro de Asuntos Indios, Jean Chrétien, propusieron poner fin a todos los derechos indios e imponer una política de asimilación, los líderes de las Primeras Naciones han estado argumentado que los niveles de vida de sus comunidades sólo mejorarán cuando logren una libertad sustancial del régimen colonial canadiense. Apoyan su argumentación en numerosas investigaciones parlamentarias y públicas, como las recién mencionadas, que han llegado a conclusiones similares. Las propuestas de entregar los "asuntos indios" a las provincias han sido criticadas por comités parlamentarios desde que

BEST COPY AVAILABLE

el *Informe Watson* sobre Educación India, de 1971, concluyó que el mejor progreso se lograría transfiriendo las escuelas indias al control indio. Sin embargo, en 2002, las juntas escolares públicas y católicas reciben un 50% más de dinero por estudiante indio de lo que reciben las escuelas administradas por las Primeras Naciones.

La estrategia y el plan de Nault no son nuevos. Los funcionarios de Asuntos Indios han estado proveyendo variaciones sobre este paquete para presentarlas a un ministro después de otro desde 1978, cuando hablaron de una *Legislación Opcional sobre Gobierno de Grupos Indios* que, como la *FNGI*, fue una propuesta de funcionarios de Asuntos Indios para revisar la ley federal india sin consultar con los líderes de las Primeras Naciones. Un examen minucioso de las propuestas que han logrado salir a luz – algo que los funcionarios de Asuntos Indios evitan como si todavía fueran parte del departamento de defensa[1] - muestra que la verborrea y propaganda ministerial proclama promesas de mayor autonomía y mayor control comunitario mientras que un examen más detallado de las propuestas actuales indican un texto legal que apunta en la dirección opuesta.

Dos cosas han cambiado durante la devastadora función de Robert Nault. Primero, Nault ha dejado en claro que está preparado para evitar la dirección electa de las Primeras Naciones – incluyendo a los líderes comunitarios, tribales y grandes consejos, organizaciones políticas provinciales y territoriales, y la organización nacional estatutaria de indios, la Asamblea de las Primeras Naciones. Segundo, la serie de estrategias políticas y prestidigitaciones retóricas de la burocracia de Asuntos Indios, en colaboración con la Oficina del Consejo Privado (PCO)[2], reelaboran el sentido común de muchas palabras claves en el discurso político inglés con el interés de forjar una ilusión de cambio frente a un renovado colonialismo[3]. Incluso la palabra "gobierno" ha sido introducida como parte de un esfuerzo para evadir propuestas anteriores de genuino *autogobierno de las Primeras Naciones*. El público canadiense y sus representantes parlamentarios pueden haber sido engañados por esta retórica de "Alicia en Ottawa" en la que las palabras asumen significados que son opuestos a sus significados usuales. Los líderes de las Primeras Naciones de todo el país han identificado claramente el programa de Nault como un ataque contra la autonomía de sus comunidades que menoscaba sus esfuerzos para reconstruir sus naciones frente al colonialismo canadiense histórico.

516

El tema de las consultas

Robert Nault se ha distinguido de sus recientes antecesores por su disposición a ser mucho más confrontativo en sus relaciones con los líderes de las Primeras Naciones. Esta actitud confrontativa ha llegado a ser considerada como gran parte de lo que realmente es la *FNGI*. Los intentos más antiguos de reescribir la *Ley India* fueron realizados sin ninguna voluntad de consultar con la dirección de las Primeras Naciones. Fue un esfuerzo realizado completamente dentro de la burocracia de Asuntos Indios, sin sufrir molestias o interrupciones de representantes indios.

Desde que John Munro se convirtió en ministro en 1980, los ministros canadienses de Asuntos Indios han necesitado crear la apariencia de consultar con los líderes de las Primeras Naciones – por cierto, si están involucrados derechos, las cortes exigen la consulta. La lista de ministros desde Munro a Nault podría ser claramente dividida entre aquellos que mostraron señales de escuchar realmente a los líderes de las Primeras Naciones y aquellos cuyas consultas eran una cáscara vacía. En todo los aspectos, los ministros cuya actitud evidencia escuchar a los líderes de las Primeras Naciones, también muestran un esfuerzo importante de dirigir en vez de ser dirigidos por sus funcionarios más elevados. Casi todos los ministros que han demostrado habilidad para escuchar a las Primeras Naciones han sido reemplazados poco después de que evidenciaran sus simpatías.

El estilo confrontativo de Nault ha determinado en cuál de estas listas aparecerá su nombre. La indicación más temprana de que estaba esperando y deseando crear una resistencia de los líderes de las Primeras Naciones fue su decisión de hacer su anuncio inicial sobre la *FNGI* frente a una audiencia de estudiantes escolares en vez de anunciar sus intenciones a los líderes de las Primeras Naciones y al parlamento, lo que constituyó un insulto calculado. Esto puede llamarse "*el indio de paja* de Nault", es decir, su respuesta a un argumento que nunca se planteó. Desde las audiencias de un equipo encabezado por el entonces recién iniciado Ministro de Asuntos Indios, Robert Andras, antes del *Libro Blanco* de 1969, los líderes de las Primeras Naciones han argumentado consecuentemente que la *Ley India* federal debería ser reescrita para reconocer y respetar los derechos aborígenes y emergentes de tratados de las Primeras Naciones[4].

Los ataques de Nault contra la *Ley India* juegan con la ilusión que este instrumento es la encarnación principal de la autoridad federal en las relaciones con las Primeras Naciones. Sin embargo, la mayor parte de sus actividades departamentales –vivienda, educación, reivindicación de tierras, incluso la policía- reciben su autoridad de leyes anuales de consignaciones. Los servicios de salud indios, aun-

517

que administrados por otro departamento, también son autorizados por una ley de consignación anual. La reforma más básica que podría hacer cualquier gobierno canadiense sería otorgar financiación asegurada, a largo plazo para programas de base comunitaria para las Primeras Naciones.

En julio de 2001, en un programa radial nacional de la Canadian Broadcasting Corporation (CBC), *La Casa*, Nault hizo énfasis en que si no podía encontrar a líderes de las Primeras Naciones a quienes consultar, encontraría otros indios que estuvieran dispuestos a consultar con él. Escuchando esta entrevista recientemente, oí la voz de un gobernador colonial determinado a instalar una administración local maleable. La retórica recordaba imágenes de una colonia del siglo XIX del Imperio Británico.

Nault también alegó, basado en alguna cooperación de una organización política provincial de las Primeras Naciones, haber obtenido participación en su programa de consulta. Sin embargo, observadores no-gubernamentales ven algunas Primeras Naciones, como el Gran Consejo Prince Albert en el norte de Saskatchewan, que han aceptado financiamiento para la consulta con el objetivo de desarrollar su oposición a la *FNGI* mientras que otras se han negado simplemente a participar.

Sin embargo, las consultas no han sido primariamente entre el ministro y los líderes de las Primeras Naciones. El ministró envió un equipo volante de funcionarios a todo el país para realizar talleres acordes con una agenda fijada en Ottawa. Estos talleres fueron dedicados a discutir los temas de la reforma de la ley india que los funcionarios departamentales eligieron poner en la agenda. Ha habido una negativa constante para incluir temas en la agenda que eran requeridos por los representantes de las Primeras Naciones. Aunque el departamento adoptó la consigna "Primero las Comunidades" no hay ninguna razón aparente para esperar que las comunidades y sus líderes electos tengan una voz en el establecimiento de la agenda. En varios de estos talleres los burócratas superaban en número a las personas de las Primeras Naciones.

El caso de la Primera Nación Dakota Tipi

La actitud confrontativa de Nault se ha extendido a otras áreas relacionadas. El 27 de marzo de 2001, por ejemplo, Nault destituyó el gobierno tradicional de la Primera Nación Dakota Tipi y la puso bajo "la administración de terceras partes hasta que hubiera una elección para nombrar un Jefe y un Consejo". La Primera Nación Dakota Tipi ha seguido una forma tradicional de gobierno, como lo permite la Ley India desde su implementación, desde tiempos inmemoriales. Los

518

dakota tipi apelaron ahora a la Corte Federal para revocar la destitución sobre la base de que Nault actuó de mala fe, no observó los principios de justicia natural y erró en la ley. Cuando el ministro suspende la autoridad de un consejo tradicional y declara que una tercera parte administradora -p. ej., una persona nombrada por el ministro que no es un funcionario civil de carrera ni un consejero electo-tiene la única autoridad, entonces (a) la comunidad no recibe ningún recurso, incluyendo programas sociales o dinero para consultores, asesores o proveedores y (b) cualquier intento del consejo tradicional para obtener acceso a las oficinas puede ser enfrentado por las fuerzas armadas policiales a requerimiento de la tercera parte administradora. Lo que esto significa es que el Ministro y sus funcionarios más elevados estaban determinados deshacerse de una forma tradicional de gobierno, que tengan o no que recurrir a la violencia para hacerlo[5].

Las Primeras Naciones consideran que la introducción de terceras partes administradoras –usualmente realizada por motivos de malversación financiera- es un desastre, del que lleva varios años recuperarse. En el caso de los dakota tipi, la evidencia apunta al uso de esta autoridad ministerial con objetivos primariamente políticos, ya que la administración financiera no ha sido cuestionada. Otro ejemplo es Pikangikum, en el noroeste de Notario, cerca de la frontera con Manitoba, donde una trágica ola de suicidios impulsó al Ministro a imponer una administración de terceras partes aunque la mayoría de los observadores consideraron que el retorno del Agente Indio, es decir, una persona que actúa en nombre del Ministro y "administra a los indios", se sumaría a los factores de colonialismo, pobreza y desesperanza que originaron los suicidios en primer lugar.

Conclusión

La retórica de "Primero las Comunidades" y "Gobierno de las Primeras Naciones" –derivada de un nuevo discurso orwelliano que se arrastra a través de toda la historia de Asuntos Indios- se ha elevado a nuevos niveles de confusión. "Gobierno", examinado más detalladamente, muestra ser una palabra codificada para la renovación de una autoridad federal. Un ciudadano hipotéticamente interesado bien podría confundirla con "autogobierno", como lo recomendaron sucesivos comités de las Cámaras del Parlamento y la Comisión Real sobre Pueblos Aborígenes.

De la misma forma, "responsabilidad" resulta ser un más *detallado informe a las autoridades federales* por parte de las administraciones grupales, en contraste con la impresión de que está relacionada con la *responsabilidad de las Primeras Naciones con respecto a sus propias comunidades.*

519 Sic

La retórica ministerial sobre mejorar las condiciones de vida comunitarias, *en vez de desarrollar el autogobierno*, va en contra del propio argumento de Nault de que todos los problemas se resolverán si el gobierno federal pudiera solamente crear las instituciones perfectas para el gobierno aborigen. Aún peor, ignora la historia de espantosos índices de mortalidad infantil que han resultado del no cumplimiento de obligaciones federales emergentes de tratados, incluso bajo acuerdos modernos de reivindicación de tierra como el *Acuerdo de James Bay*.

Lo que he llamado "retórica" no es simplemente juego de palabras. Si es un juego, es un juego mortalmente serio. La retórica de Nault representa un enorme cambio, un cambio súbito y dramático que el gobierno liberal está jugando primariamente con la Oposición Oficial en el Parlamento de Canadá, un partido largamente dedicado a la asimilación, una palabra codificada para la disolución (la destrucción, si es necesaria) de las Primeras Naciones.

En todo este Parlamento y el previo, el partido del ala derecha, la Alianza Canadiense, y su antecesor, el Partido Reformista, han dicho al Primer Ministro Jean Chrétien que su gran equivocación en la política india fue su abandono de la política del *Libro Blanco* de 1969, de asimilación forzada y de anulación de los derechos aborígenes y de tratados. Los indios, argumenta la Alianza, necesitan ser arrastrados a integrarse a la sociedad mayoritaria.

Los miembros parlamentarios de la Alianza que impulsan al gobierno liberal hacia la asimilación están conscientes de la creciente serie de casos en que la Suprema Corte de Canadá y las Cortes de Apelaciones han declarado que la garantía de los derechos aborígenes y de tratados en la Parte II de la *Ley Constitucional de 1982* es una promesa solemne y que las obligaciones de la Corona Canadiense hacia las Primeras Naciones son deberes fiduciarios legalmente aplicables, de los que depende el "honor de la Corona". Incluso pueden ser conscientes del interdicto de la Corte contra lo que la Suprema Corte describió como "tratos rígidos" en las relaciones con las Primeras Naciones. Su respuesta a esta línea de razonamiento es que suena a activismo judicial. Estos son asuntos que tiene que resolver el Parlamento, por ejemplo, a través de la *Iniciativa de Gobierno de las Primeras Naciones*.

Notas

1 Los Asuntos Indios fueron administrados por el departamento de defensa durante muchos años, en realidad desde la Confederación hasta fines de la Primera Guerra Mundial. Después de la Segunda Guerra Mundial fue dominado por oficiales militares retirados que continuaron reconociendo los rangos de cada uno.

2 PCO es un departamento federal directamente vinculado al Primer Ministro que tiene la responsabilidad de los asuntos constitucionales incluyendo "Asuntos Constitucionales Aborígenes", un término usado antes para describir una rama del PCO. Como su nombre sugiere, esta agencia sumamente central entre las agencias centrales opera bajo un manto de secrecía. El actual Ministro Adjunto de Asuntos Indios es el más antiguo de varios funcionarios que llegan a Asuntos Indios del PCO. PCO es la vía de promoción más probable para funcionarios de Asuntos Indios relacionados con temas de gobierno.

3 El gobierno usó consecuentemente términos en la discusión de las relaciones con las Primeras Naciones usados en otro discurso político pero que ellos luego los redefinen en forma bastante poco común. Como resultado, el ciudadano común con un interés casual en la política india es llevado a creer, por ejemplo, que el gobierno está intentando posibilitar el autogobierno, o hacer otras cosas buenas cuando, en realidad, está haciendo lo contrario.

4 Es bastante fundamental para mi tesis, aquí y en cualquier parte, que los líderes de las Primeras Naciones han sido totalmente consecuentes en las posiciones que han tomado ante diversos tipos de audiencias públicas, al menos a partir de 1967. Utilizo este punto de referencia porque se suponía que las audiencias de Andras eran para recoger la evidencia en que se suponía se basaría el Libro Blanco. Es claro que el *Libro Blanco* en realidad fue escrito en la Oficina del Consejo Privado sin tomar en cuenta la evidencia recogida por el Ministro Andras.

5 Solicitud de decreto de *certiorari* de la Primera Nación Dakota Tipi en la Corte Federal de Apelaciones, 5 de abril de 2002.

TERRITORIOS DEL NOROESTE

Tal como sucedió el año pasado (ver *El Mundo Indígena 2000-2001*), la explotación de los recursos no-renovables dominó la agenda política de los pueblos indígenas de los Territorios del Noroeste (NWT) en 2001. Durante los doce meses pasados, las actividades económicas en NWT crecieron substancialmente, tanto en términos de producto interno bruto como en empleo, mayormente como resultado de la prospección y explotación de minerales, petróleo y gas. A este crecimiento se agregó el ímpetu adicional de las extensas preparaciones de los gobiernos y la industria previas a la construcción de un importante gasoducto de gas natural a través del Valle Mackenzie. Este gasoducto, como está actualmente planificado, atravesará NWT de norte a sur, pasando por la mayoría de las regiones que están bajo

521

negociaciones de reivindicaciones indígenas de tierra o de autogobierno. Frente a toda esta actividad, el interés primario de los gobiernos indígenas, comunidades y corporaciones era garantizar un reconocimiento apropiado y protección de sus intereses. Desgraciadamente, hubo muy poco progreso en NWT en términos de la implementación del derecho inherente del autogobierno indígena.

El desarrollo de las propuestas de gasoducto

Un desafío clave para los gobiernos indígenas de NWT ha sido determinar cuál de las tres propuestas de gasoducto sirve mejor a sus intereses económicos y sociales a largo plazo. Dos de ellas están respaldadas por consorcios de grandes corporaciones multinacionales: una, Alaska Gas Producers, propone construir un gasoducto desde la Bahía de Prudhoe en el norte de Alaska, atravesando los territorios del Yukon en el norte de Canadá hasta el sur de Canadá, mientras que la otra, Mackenzie Delta Producers Group propone una ruta de gasoducto de los campos de gas natural en el norte de NWT a través del Valle Mackenzie. La tercera propuesta proviene de Arctic Resources Corporation (Arctic Gas), que está dispuesta a considerar el 100% de propiedad aborigen y el financiamiento de la deuda en contrapartida de un gasoducto también a partir del Mar de Beaufort. Cada uno de estos proyectos abogó intensamente ante los gobiernos indígenas y no-indígenas en busca de su apoyo y, para fines de año, Mackenzie Delta Producers Group parecía tener una clara ventaja.

A fines de la primavera de 2001, Mackenzie Delta Producers Group y Aboriginal Pipeline Group, un organismo gubernamental/industrial que representa a las organizaciones regionales aborígenes de NWT, llegaron a un acuerdo tentativo sobre un *Memorando de Entendimiento* (MOU) sobre igualdad de participación aborigen en un proyecto de gasoducto. El Pipeline Group presentó primero el MOU ante la dirección indígena en una reunión en junio, en Hay River. A cambio de la tercera parte de la propiedad de un potencial gasoducto, compromete a los gobiernos inuit, dene y metis a apoyar la construcción de un gasoducto en el Valle Mackenzie y a reconocer la jurisdicción federal sobre el monitoreo y regulación del gasoducto. Este MOU fue objeto de un intenso debate entre la dirección, un debate que continuó durante todo el verano y el otoño en todas las regiones del Valle Mackenzie. Para tomar una posición a favor o en contra del MOU, cada comunidad indígena estaba obligada a aclarar sus puntos de vista sobre el futuro desarrollo económico en su región y cómo un gasoducto encajaría con esto.

522

Una de las oposiciones más fuertes a este MOU provino de las Primeras Naciones Dene en la región Deh Cho, que están negociando colectivamente un acuerdo con Canadá que implementa mejor los términos originales del Tratado 11 entre los deh cho y la Corona. Una Asamblea Especial Deh Cho, en agosto, acordó unánimemente que el apoyo de la región a un proyecto de gasoducto tenía como condiciones: 1) llegar a un acuerdo con Canadá sobre el reparto de beneficios provenientes de los recursos y derechos de acceso a la tierra; 2) una evaluación ambiental del proyecto que incluya a los deh cho como participantes plenos e iguales, y 3) la negociación de acuerdos de impacto/beneficio para las comunidades deh cho. Hasta ahora no se ha cumplido ninguna de estas condiciones y los deh cho todavía no han aprobado formalmente la propuesta de proyecto. Varias organizaciones de reivindicación de tierra en la región de Sahtu también rechazaron el MOU tal como está, y han dado su apoyo al gasoducto alternativo propuesto por Arctic Resources Corporation (Arctic Gas). No obstante, los proponentes del proyecto siguieron presionando y, en enero de 2001, Delta Producers Group y Mackenzie Valley Aboriginal Pipeline Corporation anunciaron conjuntamente su intención de trabajar en conjunto en la elaboración de una solicitud para una aprobación reguladora.

Aunque los gobiernos aborígenes pueden lograr alguna propiedad equitativa en un eventual gasoducto en el Valle Mackenzie, jugarán aparentemente sólo un rol limitado en los estudios sobre su impacto, aprobación formal y regulación. A juzgar por el contenido del proyecto del *Plan de Cooperación* (diciembre de 2001) sobre aprobación de proyectos, estas responsabilidades quedarán mayormente en manos del gobierno federal y los organismos de cogestión. Este *Plan* fue elaborado durante el transcurso de un año sobre la base de una serie de evaluaciones de impacto y autoridades reguladoras, y los gobiernos aborígenes de NWT fueron restringidos a un rol consultivo. Esta exclusión reveló claramente cuánto camino tienen que andar todavía los gobiernos aborígenes para lograr un reconocimiento práctico de sus derechos inherentes al autogobierno de sus tierras y recursos tradicionales.

Discusiones sobre autogobierno

Las negociaciones sobre autogobierno entre las organizaciones regionales y el gobierno federal progresaron sólo modestamente durante el año pasado. En octubre de 2001, se inició un *Acuerdo en Principio* sobre autogobierno con los gwich'in e inuvialuit por parte de negociadores aborígenes y gubernamentales, y ahora ha comenzado el

523

trabajo en dirección a un Acuerdo Final, que todavía demorará varios años. Las etapas finales de las conversaciones sobre la reivindicación de autogobierno ỳ tierras de los dogrib con Canadá siguen estirándose, pues los desacuerdos sobre temas claves como la "certeza" se superponen con otros territorios de Primeras Naciones y los poderes fiscales son un impedimento para llegar a un acuerdo. Durante el verano, los negociadores deh cho y negociadores federales/territoriales concluyeron un *Acuerdo Interino* y un *Acuerdo de Marco* como base para futuras negociaciones. Algunas de las previsiones de este *Acuerdo Interino* no tienen precedente en las conversaciones canadienses sobre tratados, pues reconocen a la región deh cho poderes de veto sobre varias autorizaciones del gobierno federal y territorial. Sin embargo, las negociaciones posteriores llegaron a un punto muerto debido a la falta de disposición de Canadá para compartir las regalías con los gobiernos aborígenes deh cho.

LOS ESTADOS UNIDOS

Como consecuencia del ataque del 11 de septiembre contra Nueva York y el Pentágono, muchos pueblos indígenas de Estados Unidos participaron en los esfuerzos para ayudar a las víctimas. Por ejemplo, las comunidades indígenas organizaron eventos espirituales para facilitar el pasaje de los fallecidos y ayudar a fortalecer a los supervivientes. Además, los guardianes de pipas espiritualmente importantes viajaron al lugar de los acontecimientos ("punto cero") para apoyar los esfuerzos de los herreros mohawk que trabajaban en el lugar. En este lugar de pena, los pueblos indígenas no sólo quemaron salvia para limpiarse a ellos mismos sino que también purificaron a cualquier individuo no-nativo que lo pidiera.

Aunque la tragedia del 11 de septiembre ha eclipsado todos los temas nacionales, muchas áreas relacionadas con las comunidades indígenas en los Estados Unidos todavía merecen la atención de las autoridades federales y estatales. Los temas relativos a la soberanía, salud y finanzas dominan el discurso político entre los nativos americanos. Como consecuencia, las polémicas en torno al Fondo Fiduciario Monetario Individual Indio, los lugares sagrados, los juegos de azar, la salud, la educación y la jurisdicción sobre tierras tribales, presupuestos e impuestos, han comenzado a atraer la atención nacio-

524

1. Cerro Yucca
2. Valle de la Muerte
3. Lago Pyramid
4. Weatherman Draw
5. Black Hills
6. Washington, D.C .

nal. Es predecible que cada una de estas áreas continúe frustrando los esfuerzos indígenas para sustentar comunidades viables.

Actualmente, el gobierno de Bush todavía no ha dado prioridad a estos temas. Esta falta de activismo por parte del gobierno federal parece estar relacionada con dificultades presupuestarias, una filosofía que promueve los derechos estatales y un compromiso con el desarrollo de recursos extraíbles.

Muchas organizaciones solidarias con los indígenas han elevado críticas en la lucha por proteger los derechos de los grupos indígenas afectados por la omisión del gobierno de tratar los intereses nativos en decisiones políticas. A este respecto, es particularmente útil el Fondo para Nativos Americanos (NARF) y el Congreso Nacional de Indios Americanos. Para ilustrar la ardua batalla que enfrentan las poblaciones indígenas en los Estados Unidos, analizaremos tres áreas específicas. Estas son el Fondo Fiduciario Monetario Individual Indio, los sitios sagrados y temas concernientes a la educación y la salud.

El fondo fiduciario monetario individual indio

Hace cinco años, 300.000 indígenas presentaron una demanda de acción de clase contra la malversación del Departamento del Interior

BEST COPY AVAILABLE

de las cuentas de fondos fiduciarios. Referido como *Cobell vs. Babbit*, quien era el Secretario del Interior de Clinton, el caso alega que el Buró de Asuntos Indios, una subagencia del Departamento del Interior, pagó menos, o en algunos casos dejó de pagar, sumas debidas a las tribus e individuos indígenas por el uso de su tierra. Este problema ocurrió generalmente con las regalías debidas por la extracción de recursos como madera, minería, pastoreo, petróleo y carbón. En este momento, estas agencias federales no se hacen responsables por los millones de dólares depositados en fondos fiduciarios establecidos para los pueblos indígenas. Este problema ha afectado principalmente a indígenas que residen en los estados de las Grandes Llanuras. Al menos el 40% de las cuentas individuales administradas por el Buró de Asuntos Indios pertenecen a individuos que viven en Dakota del Norte, Dakota del Sur y Nebraska.

La debilidad endémica en responsabilizarse por los procedimientos comenzó en 1887, cuando la ley federal dividió algunas tierras de reservación en parcelas menores para el uso individual de los indígenas. Actualmente, el Buró de Asuntos Indios supervisa 45 millones de acres. Como la tierra está en fideicomiso, no puede ser gravada o vendida y el gobierno debe aprobar cualquier arrendamiento.

Después de la elección del presidente Bush, el caso *Cobell vs. el Departamento del Interior* se centró en las acciones de la recién nombrada Secretaria del Interior, Gale Norton, y Neal McCaleb, el recientemente nombrado director del Buró de Asuntos Indios. A fines de diciembre, el Juez del Distrito, examinando el caso, presentó cargos de contumacia contra los funcionarios gubernamentales por la pérdida potencialmente fraudulenta de este dinero fiduciario. De acuerdo al Juez de Distrito, Norton y McCaleb no ayudaron a los intentos de los titulares del fideicomiso a obtener información relativa a los fondos que faltaban de sus cuentas.

Cuando la corte reasumió sus funciones después de su receso durante enero de 2002, la Secretaria de Interior habló de sus esfuerzos para determinar a cuántos nativos se les debe dinero a causa de malversaciones previas del fondo, malversaciones que comenzaron hace más de 100 años. La principal defensa de Norton se centra en las imperfectas prácticas de contabilidad del pasado, una pérdida de documentos esenciales debida a archivos inadecuados y la destrucción de otras informaciones fundamentales por administradores anteriores.

Tanto McCaleb como Norton están encabezando los esfuerzos para retirar al Buró de Asuntos Indios su histórico control sobre las cuentas fiduciarias. En cambio, plantean la creación de un Buró de Administración de Bienes Fiduciarios Indios. Consecuentemente, Norton solicitó que se destinaran $300 millones para que el Buró de Asuntos Indios fuera transferido al Departamento del Interior. Aparente-

526

mente la Secretaría planea usar este dinero para la administración de fondos fiduciarios. Sin embargo, sólo $83 millones de este fondo serán usados para examinar la reforma del fondo fiduciario. Casi todos los líderes nativos se oponen a esta propuesta. Como lo destacó un líder, este cambio no trata el problema de largas décadas de malversación del gobierno de miles de millones de dólares que pertenecen a los propietarios nativos.

Como alternativa, los líderes tribales sugirieron centralizar los fondos fiduciarios –tanto tribales como individuales- permitiendo al Buró de Asuntos Indios continuar administrando los fondos. Actualmente, la administración de los fondos fiduciarios está diseminada entre una serie de departamentos del Interior y de Asuntos Indios. Según el Presidente de los santee sioux, Roger Trudell, "lo primordial sería sacar el buró del Departamento del Interior. En este momento, los peces reciben más dinero que una persona india".

Si la demanda de acción de clase persevera y se determina una pérdida total del ingreso debido a los pueblos indígenas, el gobierno federal será responsable de devolver ese dinero perteneciente a los individuos implicados en la demanda. Hasta el momento los cargos contenciosos que enfrentan Norton y McCaleb todavía no han sido resueltos.

Sitios sagrados

La protección de la tierra considerada sagrada para los pueblos indígenas ha sido un tema polémico en los Estados Unidos. Se produce una situación particularmente problemática cuando el sector privado o público controlan tierra culturalmente importante en vez de los pueblos indígenas. El cerro Yucca brinda un ejemplo de esta dificultad.

En enero de 2002, el Departamento de Energía eligió al cerro Yucca como depósito de la mayor parte de los desechos nucleares de la nación. Actualmente, se generan unas 40.000 toneladas anualmente. Las estimaciones sugieren que esta cantidad crecerá por lo menos en 2.000 toneladas anuales. Para encarar este problema, el Departamento de Energía quiere depositar un mínimo de 77.000 toneladas de material altamente radioactivo en el cerro Yucca.

Ubicado en Nevada, el cerro Yucca es considerado un lugar con un inmenso poder espiritual para los pueblos shoshone y paiute. Conforme a sus creencias, incluso el agua que emerge del cerro contiene energía espiritual. Aunque el cerro ha sido usado por el ejército para pruebas nucleares, la tierra está jurídicamente protegida por un tratado de 1863 firmado por el gobierno de los EE.UU. y los shoshone.

527

Desgraciadamente, los shoshone no han podido controlar sus derechos a la tierra. Debido a la degradación ambiental de este área, la Nación Shoshone Occidental sufrió intensivamente de cáncer, leucemia y otras enfermedades como resultado de la precipitación radioactiva de más de 900 explosiones atómicas en su territorio.

Durante el ejercicio presidencial de Clinton, éste vetó el uso del cerro Yucca como depósito nuclear. Con la nueva administración, esta política ha cambiado. El presidente Bush aprobó el uso del sitio como área de depósito para desechos radioactivos en febrero de 2002. Si el Senado y la Cámara de Representantes aprueban el plan, el cerro Yucca se convertirá en el depósito principal de desechos radioactivos de la nación . Actualmente, los pueblos indígenas afectados, los funcionarios de Nevada y los ambientalistas están luchando contra la designación del cerro Yucca. Sin embargo, parece que esta coalición perderá políticamente la batalla.

Para agregar el insulto a la injuria, la Ley del Senado 958, la Ley de Distribución de Reivindicaciones de los Shoshone Occidentales ofrece $117 millones a los ciudadanos shoshone occidentales por 26 millones de acres de tierra que no están a la venta, ni nunca lo han estado. Con la aprobación de esta ley, no será considerada ninguna demanda futura planteada por los shoshone occidentales. Actualmente, la ley todavía está en estudio. Es imposible predecir si el Senado aprobará la ley una vez que vaya a votación. Los patrocinadores de la ley tienen la esperanza de que este pasaje disminuirá las pérdidas del cerro Yucca otorgando compensación por la tierra y costos de largo plazo en prejuicio de los shoshone occidentales debido al mal uso pasado de su territorio.

Weatherman Draw, que comprende 47.000 acres y está ubicada aproximadamente a 70 millas al sudeste de Billings, Montana, es otra área sagrada en peligro. Al menos diez naciones indígenas consideran sagrada esta región. Todo el paisaje está lleno de numerosos dibujos rupestres que se remontan a miles de años. Desgraciadamente, Philip Anschutz, la 16ª persona más rica del mundo, tiene un permiso para perforar en busca de petróleo en el área. Compró el la autorización en 1994, antes de las reglamentaciones del Buró de Administración de la Tierra relativas a la protección de lugares importantes para el patrimonio de nuestra nación. Durante el término presidencial de Clinton, el tema fue enterrado. Después de la victoria de Bush, éste otorgó a la firma de Anschutz el derecho a comenzar a perforar en la región en junio de este año.

Como estrategia para proteger la región, los blackfeet han ofrecido a Anschutz el derecho para perforar en su reserva en vez de en el sitio sagrado. Sobre la base de investigaciones geológicas, la región ofrecida por esta nación es conocida por contener al menos dos mil

528

millones de barriles de petróleo. Hasta la fecha, Anschutz ha rehusado considerar la oferta de los blackfeet.

En una nota más optimista, los lenape de Nueva Jersey han logrado salvar un sitio de 10.000 años de antigüedad de planes del municipio de Vernon, New Jersey, para construir un campo de baseball en el área sagrada. En este caso el Congreso Nacional de Indios Americanos aprobó una resolución que protege al sitio.

Otro acontecimiento positivo es el acuerdo entre la Tribu paiute del lago Pyramid con el Departamento del Interior y ciudades locales en Nevada. Se utilizará $36 millones para limpiar el Truckee River, una importante fuente de agua para el lago Pyramid. Como consecuencia el pez cui-ui, en peligro, que sólo se encuentra en el lago Pyramid y es considerado fundamental para los paiute locales, tendrá una oportunidad de recuperarse (ver también *El Mundo Indígena 2000-2001*).

Temas de la salud

Durante el año, el Servicio de Salud India, bajo los auspicios del Departamento de Salud y Servicios Humanos, recibió $2,6 mil millones de dólares para suministrar atención sanitaria a los 2,4 millones de indios americanos y nativos de Alaska. Las poblaciones que residen en reservaciones o en comunidades rurales recibirán la mayor parte de este dinero.

Actualmente, el 60% de los pueblos indígenas de los Estados Unidos dependen del Servicio de Salud India para sus necesidades médicas. Y, sin embargo, la salud de los pueblos indígenas es todavía peor que la de cualquier otra población étnica de los Estados Unidos. Existen obvias disparidades de salud en términos de expectativa de vida, mortalidad infantil, diabetes, tuberculosis y alcoholismo. La expectativa de vida es cinco años menor que la de cualquier otra población de los Estados Unidos. La mortalidad infantil es de 8,9 por cada 1.000 nacimientos, comparado con el 7,2 de la población en general. En otras áreas, estas disparidades son mucho peores. En relación con el resto de la población, los índices de muerte por alcoholismo (74%), tuberculosis (500%), diabetes (390%) y suicidio (190%), son claramente mucho más altos para los pueblos indígenas.

De acuerdo con informaciones del Servicio Indio de Salud, este organismo sólo recibe el 59% del dinero necesario para enfrentar las necesidades de salud de los pueblos indígenas. Es de esperar que el presupuesto del año que viene tome en cuenta esas disparidades.

529

Desarrollo

Las reservaciones están tratando desesperadamente de crear oportunidades de empleo para sus ciudadanos. En algunos estados, los juegos de azar han provisto un tremendo impulso a las economías locales. Sin embargo, muchos estados no permiten este tipo de actividades. En los estados donde se permiten los juegos de azar, el mercado se está saturando con actividades competitivas. En el pasado, los beneficios provenientes de los juegos de azar no estaban sujetos a impuestos en el estado en que operaban. Una serie de estados han luchado exitosamente para gravar estos beneficios durante el año pasado. Esto ha reducido los beneficios provenientes de los juegos de azar.

En Nebraska, la comunidad santee ha seguido luchando contra el estado por el derecho a operar legalmente actividades de juego de azar. Por primera vez desde que surgió el tema, el comité que encaraba esa actividad logró votos suficientes para enviar la ley a votación. Se espera que la ley reciba apoyo suficiente de las legislaturas de otros estados para realizar un balotaje estatal sobre los derechos de los indígenas a los juegos de azar. Si la ley es aprobada, los casinos serían permitidos en tierras de reservación o tierras fideicomisarias de propiedad de los omaha, winnebago, ponca, y santee. Sin embargo, de acuerdo a algunos funcionarios electos, no hay votos suficientes disponibles en la legislatura estatal para poner el tema en el balotaje de noviembre.

Durante el año pasado, los lakota intentaron desarrollar la producción comercial de cáñamo. La importación de cáñamo es permitida por NAFTA y actualmente Canadá es uno de los mayores exportadores de cáñamo a los Estados Unidos. Desdichadamente, los Estados Unidos no otorgaron a los lakota el derecho de producir cáñamo para la venta.

Es de lamentar que el estado y las leyes federales continúen impidiendo el desarrollo de las tierras tribales. Hay pocas opciones disponibles para los pueblos indígenas aparte de los juegos de azar, la venta de recursos extractivos y el arrendamiento de tierras para pastoreo o cultivo. Pocas naciones han logrado obtener dinero suficiente en cualquiera de estas áreas para poder diversificar su economía. Es de esperar que el año 2002 sea un año más próspero para los pueblos indígenas de los Estados Unidos.

Educación

Los estudiantes nativos americanos enfrentan muchos obstáculos para su progreso educativo. Sólo el 9% de los nativos americanos

530

tiene grados secundarios, comparado con el 22% de los blancos y 20% para todos los otros grupos étnicos. Los programas escolares del Buró de Asuntos Indios, que brinda servicios a 50.000 alumnos, recibirán $504 millones de dólares en 2002. Aunque la Administración General de Servicios estima que se necesitan $292 millones para reparar, mejorar y construir escuelas bajo la administración del Buró de Asuntos Indios, sólo se adjudicaron $13,1 millones de dólares para esas necesidades.

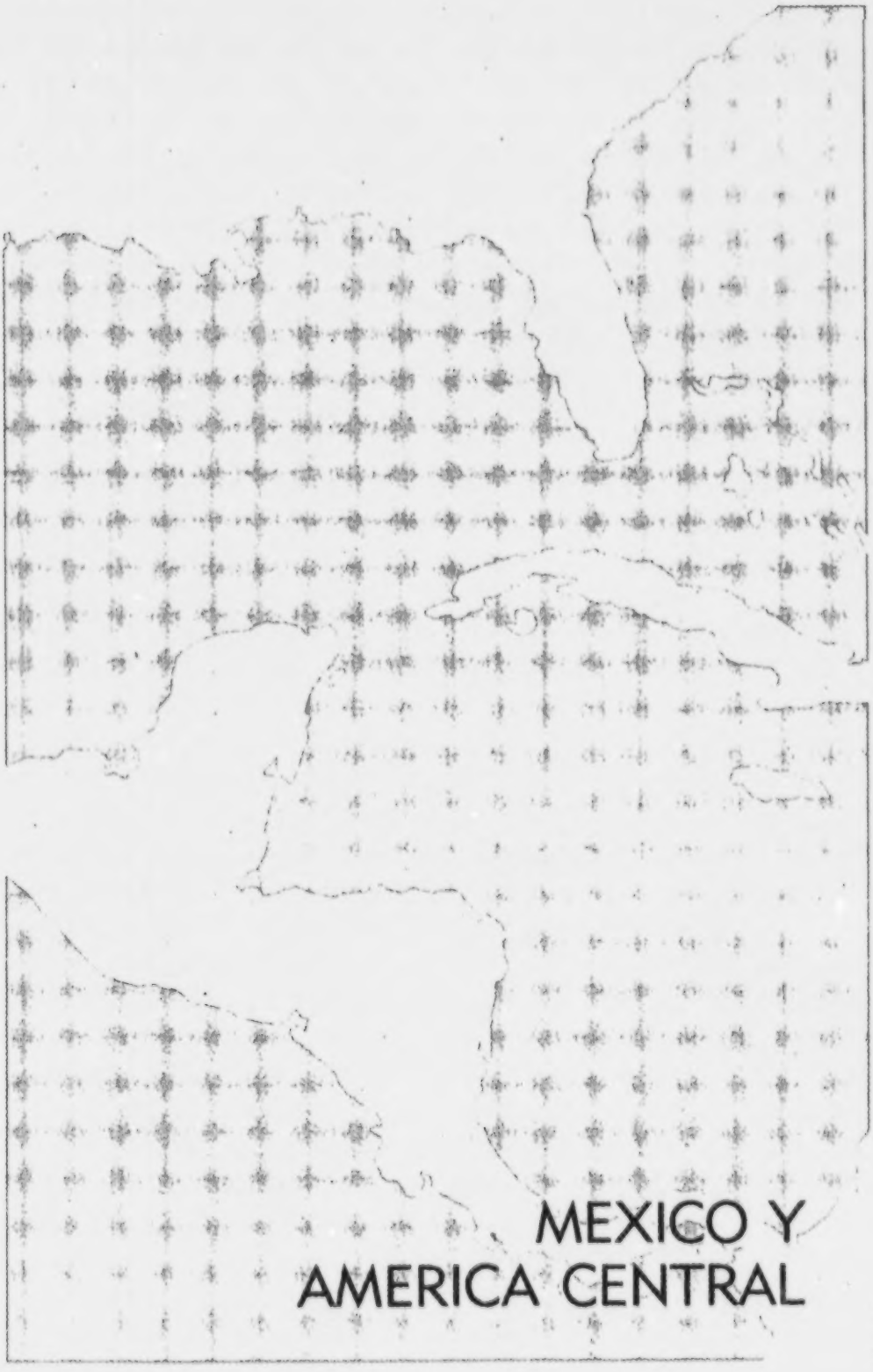
Las escuelas nativas que administran sus propios programas educativos también han recibido menos dinero que el solicitado. Durante el año fiscal 2002, estas escuelas sólo recibirán el 80% de los fondos necesarios para cumplir con sus responsabilidades administrativas.

Los líderes de la educación nativa están haciendo lobby con Bush para que "no se olvide de ningún niño", y para que financie adecuadamente a las escuelas en su presupuesto de 2003. Todavía no han visto los mil millones de dólares prometidos por Bush para mejorar la educación nativa americana. Es de esperar que los niveles de financiamiento aumenten durante el próximo año fiscal.

Reivindicaciones de tierra

En 2001, pocas –si alguna- comunidades nativas tuvieron éxito en sus esfuerzos para que se les devuelva la tierra tomada ilegalmente u obtener una compensación monetaria por las tierras perdidas. La Tribu Timbisha Shoshone todavía está por recibir una cantidad de acres en el Valle de la Muerte, aunque se les prometió que esto ocurriría en una sentencia de 1983. Los lakota, que consideran la venta de los Black Hills de Dakota del Sur como ilegal, recibieron dinero por su tierra. Sin embargo, como los hopi, los lakota se rehúsan a tomar dinero por su tierra.

Actualmente, los wichita y las tribus emparentadas, ubicadas en Oklahoma, están luchando contra Texas por el derecho al control del uso de sus tierras ancestrales en esa región. Es legal que los terratenientes privados de Texas vendan permisos a particulares para cavar en su propiedad en busca de objetos que pertenecen culturalmente a los wichita y sus afiliados. Hasta ahora el estado de Texas no ha detenido esa práctica.



MEXICO Y AMERICA CENTRAL

BEST COPY AVAILABLE

MEXICO

Durante el primer semestre de 2001, los acontecimientos más relevantes para el mundo indígena y para el país, fueron la "marcha por la dignidad" hacia la ciudad de México por los comandantes del EZLN[1] -y encabezada por el subcomandante insurgente Marcos- y el debate en torno a la reforma constitucional en materia de derechos y cultura indígenas.

La Marcha de los del Color de la Tierra

La marcha arrancó el 24 de febrero, tuvo una duración de 17 días y recorrió más de dos mil kilómetros en 13 estados, hasta llegar a la capital de la República, para cumplir una prolífica agenda.

Se puede destacar dos objetivos relevantes de la marcha. El primero fue la interacción que el EZLN pudo establecer con lo más representativo del movimiento indígena nacional al celebrar un encuentro nacional en la comunidad de Nurío de Michoacán, donde el EZLN y el movimiento indígena ratificaron su voluntad de impulsar reformas legales hacia la autonomía y libre determinación de estos pueblos. A este evento asistieron (de acuerdo al Diario *La Jornada* del 5 de marzo de 2001) alrededor de 3.383 delegados de 41 pueblos indígenas, provenientes de 27 estados de la república, además de la presencia de unos 5 mil observadores.

El segundo objetivo de la marcha era re[illegible]endar con su presencia su apoyo total a la iniciativa de reforma constitucional sobre derechos y cultura indígenas, elaborada por la Comisión de Concordia y Pacificación (COCOPA), como resultado de la primera mesa del Diálogo de paz, en San Andrés Larráinzar, Chiapas en 1996, y que el presidente Vicente Fox había enviado al Congreso de la Unión, como primera acción de gobierno y como cumplimiento de un compromiso de campaña con el movimiento indígena. Por tal razón, un punto central en la agenda, tenía el propósito que la comandancia subiera a la Tribuna del Congreso de la Unión, y expusiera ante 500 diputados y 128 senadores y ante la nación, los motivos de los pueblos indígenas a favor de dicha iniciativa.

Durante febrero y marzo, el tema nacional más trascendente fue la presencia de la comandancia zapatista en la capital del país. No hubo sector social del país que no expresara su postura frente a tan significativo acontecimiento. El Congreso de la Unión, e incluso los partidos que lo integraban, se polarizaron entre los que estaban a favor y en contra, de las demandas de los zapatistas. Finalmente, el 28 de

marzo desde las 11 de la mañana a las 3 de la tarde, la Cámara de Diputados, sin la presencia de los senadores -y en todos los rincones del país, con la cobertura televisiva nacional- escuchó conmovida, las palabras de la comandancia zapatista.

La Reforma a la Constitución en el Congreso de la Unión

Lo que vino después fue un intenso debate a nivel nacional sobre la reforma constitucional y su promulgación. Este episodio ha pasado por diversas fases, sin que hubiera concluido en febrero del 2002. Primero la reforma fue aprobada por el Congreso de la Unión. Después, pasó a su ratificación por las legislaturas locales ya que para que las reformas constitucionales entren en vigor, la ley establece que se requiere la aprobación de 16 Legislaturas Estatales. La reforma debía ser debatida en los Congresos estatales en donde debía ser refrendada o rechazada. Si la mayoría la aprobaba, ésta pasaba a ser aceptada y promulgada por el poder ejecutivo de la nación; en caso de ser rechazada, debía regresar al Congreso de la Unión para ser modificada.

BEST COPY AVAILABLE

Este largo proceso de discusión de la reforma en el interior del país mantuvo activo al movimiento indígena a lo largo del territorio nacional, y el país centró su atención en este tema durante varios meses hasta que el 11 de septiembre de 2001, con el derrumbe de las torres gemelas en Nueva York, la atención del mundo y México se desvió hacia otras problemáticas, y otra vez el conflicto chiapaneco y los derechos de los pueblos indígenas dejaron de estar en el centro de la atención nacional.

Con la marcha, los zapatistas habían logrado ganar la batalla de la legitimidad de su lucha ante la opinión pública. Sin embargo, los grupos de poder en el senado de la República, en una alianza entre el Partido Acción Nacional (PAN) y el Partido Revolucionario Institucional (PRI), no cedieron en su postura de negarse a aceptar la propuesta de la COCOPA. Contrariamente a lo esperado, el 26 de abril del 2001, el Congreso de la Unión aprobó una ley sobre Derechos y Cultura Indígenas, que ignoró la propuesta de la COCOPA y que minimizó los alcances de los derechos indígenas; reforma que de inmediato fue rechazada por las principales organizaciones indígenas del país.

La respuesta Zapatista

Tres días después, el Ejército Zapatista de Liberación Nacional (EZLN) emitió dos comunicados en donde plasmaba su rechazo a la reforma, al señalar que "no responde en absoluto a las demandas de los pueblos indios de México, del Congreso Nacional Indígena, del EZLN, ni de la sociedad civil nacional e internacional" y que la misma

> *[T]raiciona los Acuerdos de San Andrés en lo general y, en lo particular, la llamada Iniciativa de Ley de la COCOPA (Comisión de Concordia y Pacificación), en los puntos sustanciales: autonomía y libre determinación, los pueblos indios como sujetos de derecho público, tierras y territorios, uso y disfrute de los recursos naturales, elección de autoridades y derecho de asociación regional, entre otros.*

Además, dicha reforma "impide el ejercicio de los derechos indígenas y representa una grave ofensa a los pueblos indios, a la sociedad nacional e internacional, y a la opinión pública, ya que desprecia la movilización y el consenso logrados por la lucha indígena ."

Asimismo, reprochó y denunció al presidente Vicente Fox por "simulador", al pretender hacer creer al movimiento indígena y a la opinión pública que había hecho suya la ley COCOPA; mientras que en los hechos no hizo nada para hacerla aprobar y cedió frente a los sectores más duros de su partido, que se han negado de manera consistente al reconocimiento de los derechos indígenas.

535

Con la reforma, señala el comunicado del EZLN, los legisladores y el gobierno de Vicente Fox cerraron las puertas al diálogo y la paz, pues

> *[E]vitan resolver una de las causas que originaron el alzamiento zapatista; dan razón de ser a los diferentes grupos armados en México... y pretenden fraccionar el movimiento indígena nacional al ceder a los Congresos estatales una obligación del Poder Legislativo Federal.*

Por lo que, "El EZLN formalmente desconoce esta reforma constitucional sobre derechos y cultura indígena", ya que también sabotea el incipiente proceso de acercamiento entre el gobierno federal y el EZLN, "traiciona las esperanzas de una solución negociada de la guerra en Chiapas, y revela el divorcio total de la clase política respecto a las demandas populares".

Con la reforma, el EZLN declaró suspendido el incipiente intercambio que había iniciado con el gobierno del presidente Fox, y declaró que "no habrá más contacto entre el gobierno de Fox y el EZLN". El diálogo se restablecerá, dejó sentado, cuando se apruebe la Iniciativa de Ley de la COCOPA; por lo que "los zapatistas seguiremos en resistencia y en rebeldía".

La ratificación de la reforma en los estados de la República

El mecanismo constitucional que obliga a que la mitad más uno (16) de los congresos locales de los 31 estados de la República, deben aprobar o rechazar una reforma constitucional, abrió una nueva esperanza para reabrir la discusión de la reforma aprobada por los legisladores. En los estados de la República, las organizaciones indígenas estuvieron activas presionando para que las legislaturas de sus estados se pronunciaran en contra de la reforma.

Fue significativo el hecho que los gobernadores de los estados de Oaxaca -José Murat- y Chiapas –Pablo Salazar- impulsaron llamamientos públicos a nivel nacional para que las legislaturas estatales del territorio nacional no aprobaran la reforma. Muchos sectores de la población hicieron llamados al país para que la reforma no se aprobara. Por ejemplo, el 13 de junio de 2001, más de un centenar de artistas e intelectuales mexicanos suscribieron un documento en el que expresaban su rechazo a la *Ley de Derechos y Cultura Indígenas* aprobada en abril pasado por el Congreso Federal.

El desenlace era imprevisible: las disputas, las alianzas y los equilibrios políticos mantuvieron a la opinión pública expectante. Al final, por un margen reducido, la reforma fue aprobada por 19 legislaturas estatales. Es relevante destacar que el rechazo a la reforma se produjo de manera contundente en los estados en donde la población

53866

indígena es mayoritaria; tales fueron los casos de Oaxaca, Guerrero, Chiapas[2] y San Luis Potosí, entre otros. La reforma fue aprobada por los votos dados por las legislaturas de los estados en los que la población indígena no es mayoritaria, lo que evidentemente restó legitimidad a la reforma.

La promulgación de la reforma

Al concluirse el proceso de ratificación por los congresos de los estados, el gobierno de la República promulgó el decreto sobre la reforma, al publicar en el Diario Oficial de la Federación (DOF) las reformas a los artículos constitucionales 1, 2, 4, 18 y 115. De esta manera, la Ley Indígena entró en vigor el miércoles 15 de agosto.

El ejecutivo realizó la promulgación de dicha ley, pese a que numerosos sectores de la población y el movimiento indígena le reclamaron que se abstuviera de hacerlo y que esperara la resolución de la Suprema Corte de Justicia sobre las controversias interpuestas ante esta Corte en contra de la reforma. Como una reacción inmediata a la aprobación de la ley indígena por los legisladores en el mes de abril, diversos actores como el gobernador, diputados y 400 presidentes municipales de Oaxaca, diputados del PRD, PRI y PVEM[3] del Congreso estatal de Tlaxcala, los municipios de Molcaxac (Puebla), de Texcaltepec (Veracruz), Copalillo (Guerrero) y Comalcalco (Tabasco), las comunidades indígenas mazahuas San Miguel Xoltepec y San Antonio de la Laguna (estado de México) y comunidades y municipios de Chiapas, entre otros, presentaron controversias constitucionales en contra de la reforma, ya que la misma, se argumentó, suprimía derechos que algunos pueblos ya habían obtenido a nivel estatal y que los preceptos contenidos en la reforma contravenían claramente al Convenio 169 de la OIT, que es ley constitucional en México.

Al conocer la decisión del ejecutivo, las organizaciones indígenas se sumaron al pronunciamiento del EZLN que calificaba a la reforma como "una traición del Estado mexicano". El mismo día en que el presidente Fox promulgó la "antiley" COCOPA, cientos de personas de organizaciones indígenas y civiles protestaron frente al Congreso; dentro del mismo un grupo de legisladores reclamaba al gobierno hacer una "reforma de la reforma". Es que, como la mayoría de los actores ha señalado, la ley había nacido "muerta".

Este es el escenario en el 2002: el EZLN continúa esperando hasta que la Suprema Corte de Justicia desahogue las controversias en contra de la reforma. Al mismo tiempo un grupo de legisladores promueve "la reforma de la reforma". Otros esperan que Vicente Fox cumpla con sus muchas promesas al respecto. Y, presionado en el extranjero por activistas prozapatistas, el presidente declaró que pro-

537

movería la discusión de la reforma; pero todo hace suponer que al regresar al país se olvidó del nuevo compromiso asumido, ya que no ha vuelto a tocar el asunto. Mientras tanto, diversos actores indígenas persisten en su rechazo a la reforma; mientras que en otros estados algunas organizaciones indígenas aprovechan el compromiso asumido por sus legisladores al aprobar la ley para intentar ganar algunos derechos que antes les habían sido negados.

El 12 de octubre fue el contexto de marchas en diversas ciudades del país, convocadas por organizaciones indígenas para conmemorar 509 años de resistencia indígena y protestar por la entrada en vigor de la reforma constitucional en materia de derechos y cultura indígenas aprobada por el Congreso. A la ciudad de México llegaron diferentes organizaciones indígenas para movilizarse por las mismas causas.

En este estado de cosas, en espera que en la primavera de 2002 la Suprema Corte de Justicia decida sobre la validez jurídica de la reforma o mande la revisión de la misma, el EZLN y las organizaciones indígenas esperan. Es toda una incógnita cuál será la reacción de los rebeldes armados, una vez que la corte dictamine: si se mantendrán en el silencio durante los restantes cinco años que le queda al gobierno de Vicente Fox (como lo hizo con el ex-presidente Ernesto Zedillo, en sus últimos cuatro años de gobierno) o si impulsarán otra nueva iniciativa que vuelvan a colocarlos en el primer plano nacional del cual han sido desplazados por los graves problemas que se debaten en el país, por una crisis económica, y ante una escalada de los precios a los servicios básicos (como la energía eléctrica). Los acontecimientos internacionales después de septiembre de 2001 y la escalada bélica del presidente Bush en contra del "terrorismo" también tienen preocupados a los actores.

El Plan Puebla-Panamá

Diversos analistas han establecido una conexión directa entre los megaproyectos económicos –especialmente el llamado "Plan Puebla-Panamá", el "Corredor Mesoamericano", los megaproyectos del Istmo de Tehuantepec, los corredores del Pacífico y del Golfo, entre otros- que impulsa la actual administración y la negativa del gobierno foxista y de su partido el PAN, a aprobar la iniciativa de la reforma legislativa sobre derechos indígenas, que incluía el reconocimiento de derechos territoriales de los pueblos indígenas, en los términos de los preceptos del Convenio 169 de la OIT [4]. De hecho, los conceptos más discutidos en el debate nacional de la reforma indígena, fueron justamente los términos de territorio, autonomía y libre determinación.

533

Las conexiones entre ambas problemáticas son evidentes: los derechos de los pueblos indígenas a sus territorios, autonomía y libre determinación, constituirían una piedra en el zapato para esas iniciativas empresariales.

En el mes de marzo de 2001 el gobierno federal dio a conocer el "Documento Base" del Plan Puebla-Panamá (PPP). En el apartado "Ámbito de Acción", se describe al PPP como un "plan de desarrollo integral de gran visión y de largo plazo que tiene como ámbito de aplicación geográfica, en su capítulo "México" a los nueve estados de la región Sur Sureste (Campeche, Chiapas, Guerrero, Oaxaca, Puebla, Quintana Roo, Tabasco, Veracruz y Yucatán) y, en su capítulo "Centroamérica", a los siete países que comprende dicha región (Belice, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua y Panamá)." Toda la región del PPP incluye a más de 62 millones de habitantes (CIEPAC 2001).

De acuerdo con su diagnóstico, en la región Sur Sureste de México se concentra la población indígena del país, así como la mayor pobreza; todo ello en el 25,7% de la superficie territorial nacional y "es considerada por el gobierno federal de México como una región estratégica para el desarrollo nacional". El gobierno de Fox, ha apostado su política económica a una mayor integración del país a la economía global para enfrentar la crisis económica que atraviesa México. Durante los primeros cinco meses del gobierno de Fox, de noviembre de 2000 al mes de abril del 2001, se perdieron 255.000 empleos en el país, según fuentes oficiales; al tiempo que el gobierno aceptó un crecimiento cero, en su primer año de gobierno.

La política foxista y las acciones legislativas, han sido contradictorias al enfrentar los principales problemas del país. Por un lado, al justificar la reforma indígena de "derechos acotados" para los pueblos indígenas, ofrecieron a cambio una mayor inversión en dinero (de hecho la reforma contiene un inciso que promete una fuerte inversión pública) señalando que "el problema de los indígenas no es de derechos, sino de pobreza", lo que ofreció mayores recursos económicos.

La realidad fue diferente. Las instituciones para el desarrollo social, incluyendo al Instituto Nacional Indigenista (INI), sufrieron fuertes recortes en su presupuesto para el año 2002 (e incluso el INI está amenazado desaparecer, y ya ha comenzado la transferencia de sus funciones hacia los estados) al mismo tiempo que recortaba recursos hacia el sector rural, y se retiró subsidios a la energía eléctrica. Esta situación, aunada al impacto que ha generado la crisis en la Argentina y la recesión en el vecino país, Estados Unidos, el gobierno mexicano insiste en el inicio de megaproyectos en el sur del país.

539

Buscando estrategias alternativas

Sin embargo, esas propuestas no gozan de simpatía entre diversos sectores populares y en especial entre las organizaciones indígenas que se sienten amenazadas frente al capital extranjero, sobre todo en un contexto de desprotección jurídica de sus territorios como resultado de la reforma aprobada; por lo que han manifestado su total rechazo a todo megaproyecto. Para enfrentar estas amenazas, diversas organizaciones indígenas, junto con sectores de la sociedad civil han iniciado un proceso de revisión de los megaproyectos y se esfuerzan por diseñar estrategias alternativas para enfrentarlo.

En el mes de mayo de 2001, la ciudad fronteriza de Tapachula, Chiapas fue la sede del Primer Foro de Información y Análisis, con la participación de 250 representantes de 109 organizaciones de la sociedad civil y de productores de los países centroamericanos. Seis meses después, se celebró el II Foro en Xelajú, Guatemala, del 22 al 24 de noviembre, con más de 800 delegados y delegadas representantes de 300 organizaciones sociales de México y Centroamérica, acompañados por observadores de Canadá, Estados Unidos, y varios países europeos. En este Foro se discutió ampliamente sobre "la globalización impuesta" de los tratados de libre comercio y en especial el PPP. En la Declaración se afirmó que:

> *Para los hombres y mujeres asistentes al Foro Xelajú, el PPP es un proyecto geopolítico prefabricado que busca construir en Mesoamérica un área de servicios e infraestructura diseñado desde la lógica de empresas transnacionales, grupos oligárquicos nacionales y organismos financieros internacionales. Este proyecto tiene en sus ejes crear una infraestructura de servicios para la exportación de bienes, la explotación de nuestros recursos naturales, la biodiversidad y la mano de obra de nuestros pueblos y no responde en ningún momento a una lógica social de los pueblos mesoamericanos y de sus comunidades.* (CIEPAC, 2001)

De esta forma, la lucha por el reconocimiento de los derechos territoriales, de la autonomía y de la libre determinación de los pueblos indígenas, adquiere nuevos rumbos al tener que enfrentar la amenaza del capital transnacional que se presume que llegará con los megaproyectos; sin que haya garantía de que tal estrategia podría detener la agudización de la pobreza, ahora profundizada por la crisis económica que vive el país.

540

La lucha de los pueblos indígenas de Guerrero

En Guerrero, los acontecimientos más trascendentes han sido la participación de los cuatro pueblos indígenas, mixtecos, nahuas, tlapanecos y amuzgos en el mitin multitudinario realizado en la Ciudad de Iguala con motivo de la Marcha Caravana de la Comandancia zapatista, y la toma del Congreso Local por parte de autoridades y organizaciones indígenas para exigir a los diputados locales el rechazo a la Ley Indígena aprobada por el Congreso de la Unión. Esta acción decidida, de bloquear el Congreso y demandar un diálogo público con los 46 diputados locales, trajo como respuesta del Gobierno Estatal la reapertura de casos contra dieciocho líderes de organizaciones indígenas acusados de sedición, motín y sabotaje. Los tres poderes del Estado se unieron para descalificar y criminalizar al movimiento indígena estatal.

A lo largo de este período se vivieron momentos muy tensos y difíciles por los conflictos políticos que siguen sin resolverse en los municipios indígenas de Xochistlahuaca, Acatepec y San Luis Acatlán. El eje de los conflictos radica en las actitudes caciquistas y corruptas de las autoridades municipales que se imponen caprichosamente a las autoridades indígenas sin tomar en cuenta las decisiones de las comunidades.

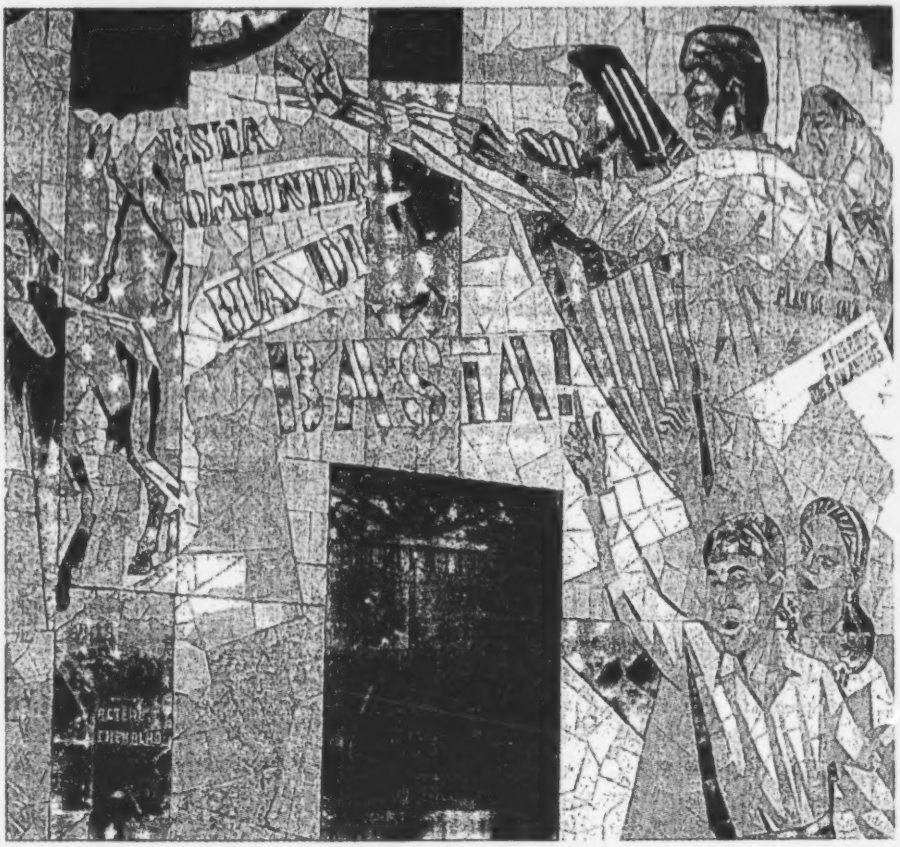
La Policía Comunitaria

En los municipios de San Luis Acatlán, Azoyú, Malinaltepec, Metlatónoc y Atlamajalcingo del Monte se ha logrado consolidar un proyecto de los pueblos tlapanecos y mixtecos denominado "Sistema de Seguridad Pública de los Pueblos Indígenas de la Montaña y la Costa Chica" conocido comúnmente como la "Policía Comunitaria". Apelando a los derechos que les asisten como pueblos, conformaron la Coordinadora Regional de Autoridades Indígenas que se encarga de administrar justicia, por mandato de la Asamblea Regional. Esta práctica autonómica que ha logrado demostrar a las autoridades estatales y a toda la ciudadanía la eficacia para abatir la delincuencia y la inseguridad pública, ha tenido como respuesta la fabricación de delitos y la persecución de sus líderes por parte de las autoridades estatales.

El 11 de febrero de 2002 fueron detenidos con lujo de violencia por elementos de la Policía Judicial del Estado cinco miembros de la Coordinadora Regional de Autoridades Indígenas en el momento que se hacía el cambio de la nueva directiva. Son acusados por privación ilegal de la libertad. Esta acción persecutoria indignó a la mayoría de las comunidades indígenas de la región, que se desplazaron a la

541

Cirilio Plácido Valerio, miembro de la Policía Comunitaria Indígena, San Luis Acatlán
Foto: Diana Vinding



Mural en la municipalidad de Santa Fe de la Laguna, una comunidad P'urhépecha en Michoacán
Foto: Diana Vinding

BEST COPY AVAILABLE

542

cabecera municipal de San Luis Acatlán para exigir la liberación inmediata de las autoridades indígenas. Debido a la actitud prepotente y racista del Agente Investigador y de la misma Policía Judicial, estuvo a punto de consumarse un enfrentamiento de lamentables consecuencias. El 12 de febrero las cinco autoridades detenidas fueron liberadas bajo caución y se revisaron ocho expedientes judiciales que contienen dieciocho órdenes de aprehensión contra miembros de la Policía Comunitaria. Se firmó una minuta para revisar cada caso, exigir el desistimiento de estas órdenes, buscar la coordinación respetuosa entre las autoridades y pugnar ante el Poder Legislativo el reconocimiento constitucional a sus derechos colectivos, autonomía y diversidad jurídica.

La situación en Chihuahua

Los rarámuri y ódame[5] irrumpen sorpresivamente en un ámbito nuevo para ellos, el de sus derechos como pueblos. La historia les dio signos de peligro. La celebración de los 500 años de dominación, las contrarreformas agrarias, el Tratado de Libre Comercio y el levantamiento chiapaneco del EZLN en 1994, fueron signos de alarma. El despertar zapatista llegaba también al norte mexicano convocando, iluminando, transformando.

Estos pueblos han adoptado muchos cambios. Se han incorporado al movimiento indígena nacional, se relacionan con otros pueblos indios, nombran autoridades jóvenes, dialogan con legisladores, etc. Un cambio mayor es el de las reuniones de autoridades tradicionales que antes sólo fueron toleradas como imposiciones, y siempre neutralizadas. Ahora ellos las han adoptado como un ejercicio de interculturalidad para comprender, asumir la historia, crear consensos y así defender su identidad.

El desdén como política de estado

Irónicamente, el mayor promotor del cambio ha sido el propio gobierno. Su política de desdén ante lo indígena, de indiferencia calculada y menosprecio racista, ha sido constante y ha provocado la reacción de los pueblos. Como resultado de esas reuniones de autoridades tradicionales, el 23 de mayo de 2001 escriben a los legisladores de Chihuahua exigiendo una consulta previa a la aprobación de la ley indígena. Terminan así: "Nosotros de por sí hemos vivido siempre sin respeto de nuestros Derechos y Cultura Indígena". Llevaban entonces la representación de 67 autoridades rarámuri y ódame. La respuesta fue el desdén. Los legisladores respondieron que no tenían tiempo

543

para una consulta, y que si la querían la hicieran ellos. Respondieron con realismo el 7 de junio:

> *Realizaremos la consulta... Somos concientes de que esto no llegará antes de que se apruebe o rechace el Dictamen, actualmente en debate, sin embargo, sabemos que es importante que como indígenas salgamos fortalecidos de este proceso de consulta.*

Durante seis meses, sin recursos, viajando de favor o a pie, recorrieron sus territorios, informaron en las reuniones dominicales, recogieron actas comunitarias. Finalmente, el 12 de diciembre presentaron los resultados al Congreso del Estado. Llevaban 64 actas comunitarias, y 4.567 firmas de rechazo a la ley. Dicen en su informe:

> *La gente indígena:.. rechazaron rotundamente la ley que se aprobó. Todas las comunidades manifestamos que queremos seguir viviendo como siempre hemos vivido, con nuestras costumbres, tradiciones, hacer los trabajos en común, tener nuestra propia manera de organización social, nuestra propia manera de hacer justicia, elegir nuestras autoridades tradicionales, tener la educación desde la cultura, usar de manera colectiva la tierra, recursos naturales y ocupar el territorio como nuestros abuelos nos encargaron. Esto ha sido nuestra vida desde hace muchos años, y con esta ley se nos niega estos derechos que los antiguos nos dejaron, la ley aprobada lejos de respetar la vivencia del pueblo rarámuri y ódame nos quita lo que de por sí hemos venido siendo y haciendo desde hace muchísimos años.*

Nuevamente fueron desdeñados. Se les recriminó por inmiscuirse en asuntos de los que nada saben, se les dijo que no son legisladores o abogados, que no llevaban las firmas de todos los indígenas de Chihuahua, que su trabajo no valía nada sin aval oficial.

Notas y Referencias

1 EZLN: Ejército Zapatista de Liberación Nacional.
2 En Chiapas, 27 diputados votaron en contra y cinco a favor de la ley.
3 PRD: Partido Revolucionario Democrático; PRI: Partido Revolucionario Institucional; PVEM: Partido Verde Ecológico de México.
4 Véanse al respecto los documentos producidos por Centro de Investigaciones Económicas y Políticas de Acción Comunitaria, CIEPAC, AC.
5 Los rarámuri (92.000) y los ódame (7.000) así como los warijó (1.000) y los pima (500-600) viven en su mayoría en la Sierra Tarahumara, en el oeste del estado de Chihuahua.

541

GUATEMALA

La situación de las organizaciones indígenas en Guatemala a lo largo del año 2001 ha estado marcada por el abandono del proceso de paz tras la llegada del Frente Republicano Guatemalteco (FRG)[1] al poder en enero del 2000 y por el enfrentamiento entre el Gobierno y la sociedad civil. El año 2001 comenzó con una recalendarización hasta el 2004 de los compromisos no cumplidos de los Acuerdos de Paz, y terminó con un polémico informe de MINUGUA (Misión de Verificación de las Naciones Unidas en Guatemala), que planteaba que:

> *[L]os compromisos relativos a los pueblos indígenas están entre los que registran mayor incumplimiento... Ello no responde al cambio propuesto en los acuerdos, sino que favorece la persistencia de un modelo monocultural excluyente*[2].

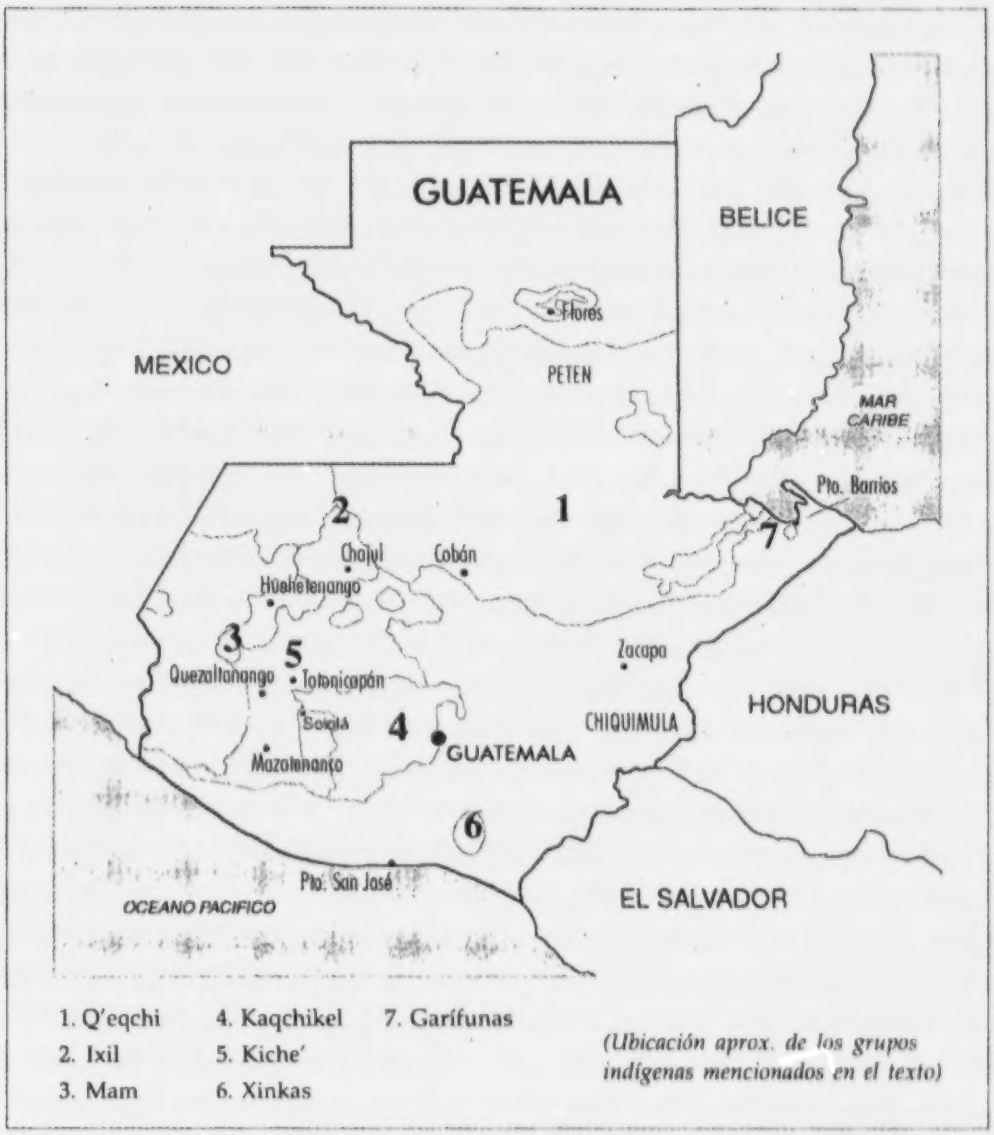
En la presentación, el Jefe de la Misión calificó a Guatemala como un "*apartheid* de hecho". En realidad, el tema indígena ha dejado de tener relevancia pública, y a las organizaciones sólo les ha quedado buscar rearticularse y encontrar un espacio para poder seguir su lucha.

El lento tejer del *"huipil"* [3] de la paz

El Acuerdo de Identidad y Derechos de los Pueblos Indígenas preveía la instalación de una serie de Comisiones Paritarias y Específicas que en 1998–1999 ofrecieron una serie de propuestas en torno a la oficialización de los idiomas indígenas, la reforma educativa y la creación de un Fondo de Tierras, aunque las proposiciones más importantes fueron abandonadas tras los resultados negativos de la Consulta Popular de mayo de 1999. Algunas de estas Comisiones quedaron sin efecto al terminar su mandato, como la de oficialización de las lenguas indígenas; otras se transformaron, como la de Reforma Educativa, que pasó a ser parte de la Comisión Consultiva; y otras siguieron funcionando como la de Tierras y la de Reforma y Participación a todos los Niveles.

La recalendarización de inicios del 2001 supuso que algunas de estas Comisiones vieron extendido su plazo de trabajo. Con ello, la de Reforma y Participación presentó las propuestas de reforma al Código Municipal y la nueva ley de Consejos de Desarrollo; la de Derechos de la Mujer Indígena la Ley contra el Acoso Sexual; y la de Tierras busca crear una "Procuraduría Agraria" que resuelva los conflictos de tierras, ante lo que consideran la inoperatividad de la oficina gubernamental creada para este efecto. Finalmente, en octubre se volvió a instalar la Comisión de Espiritualidad y Lugares Sagrados,

545



que llevaba más de dos años sin funcionar. En el discurso inaugural, el Secretario de la Paz dijo que ésta era una acción más en "el lento y delicado tejido del huipil de la paz".

Pero este tejido va demasiado lento y por ahora con más vacíos que urdimbres. Para muchos sectores, estos avances son más simbólicos que de contenido, y está por comprobarse la voluntad del Gobierno de cumplir con los Acuerdos de paz. Una muestra sería el escaso presupuesto de la Secretaría de la Paz, su insistencia en asuntos simbólicos y el estancamiento de las propuestas cuando pasan al Congreso de la República. Además, mantiene a COPMAGUA como contraparte, cuando esta instancia ha quedado deslegitimada dentro del movimiento maya[4].

BEST COPY AVAILABLE
546

Frente a este panorama, se dan diversas propuestas para empujar avances por otras vías alternativas, como trabajar directamente con el Congreso de la República en vez de con la Secretaría de la Paz, superando lo que fue la institucionalidad de la paz.

El reto de trabajar desde el Estado

Si la apuesta del Gobierno por la Paz parece tibia, uno de sus componentes sí ha recibido cierto impulso: la Reforma Educativa. Ello gracias a la fuerte articulación de organizaciones de la sociedad civil que apoyan esta reforma y también al papel del Dr. Demetrio Cojtí como Viceministro de Educación. Su primer paso fue establecer a principios de este año el Gran Diálogo Nacional para definir los contenidos de la Reforma. Además, se ha impulsado la Educación Bilingüe e Intercultural, uno de cuyos objetivos ha sido una capacitación mínima de 11.000 maestros en la lectura y la expresión escrita de sus idiomas.

Sin embargo, el trabajar dentro del Gobierno tiene sus costes, como Cojtí se dio cuenta cuando tuvo que expulsar de sus oficinas a los directivos del Programa Nacional de Autogestión Educativa –PRONADE-, que se quejaban de llevar varios meses sin cobrar; o cuando tuvo que defender una Campaña de Alfabetización de métodos cuestionables y magros resultados. Doña Otilia Lux, Ministra de Cultura, también ha sufrido desplantes. Un momento difícil para estos funcionarios fue cuando en julio les tocó defender la postura del Gobierno ante el IVA –Impuesto sobre el Valor Agregado- ante un grupo de líderes mayas convocado para ese efecto.

Las continuas acusaciones de politización, ineficiencia y corrupción sobre el Fondo Indígena de Guatemala (FODIGUA), creado en 1995, fueron noticia de prensa durante algunas semanas en mayo y junio. Después de un debate entre organizaciones, instituciones y el mismo Gobierno, sobre si había que reformar la institución o si el Gobierno debía intervenirla, el tema bajó de intensidad, y FODIGUA continúa, con menos legitimidad aún.

Otro problema que se mantiene es el mínimo presupuesto de las instancias mayas en el Estado. Así ocurre con la Academia de Lenguas Mayas desde 1990, y así está ocurriendo con la Dirección General de Educación Bilingüe Intercultural, la Defensoría de la Mujer Indígena y la Defensoría Indígena bajo la Procuraduría de los Derechos Humanos.

547

La rearticulación de espacios en el Movimiento Maya

Los años 1999 y 2000 fueron años "negros" para las organizaciones que conforman el Movimiento Maya: el intento de una expresión unitaria –COPMAGUA- había fracasado, y las reformas constitucionales habían quedado estancadas[5]. Sin embargo, pronto empezaron a hacerse intentos de rearticulación de las diferentes expresiones. Aunque muy diversas en cuanto a objetivos, composición o forma de trabajo, todas coincidían en rechazar la institucionalización y en promover el diálogo y la reflexión sobre lo ocurrido.

Desde el año pasado han aparecido el "Foro Maya" –alrededor de los problemas de FODI-GUA-, la "Plataforma" –auspiciada por MINUGUA-, y el "Espacio de Coordinación Política Maya" –que debía trabajar propuestas de reformas a la Ley Electoral-. Por otro lado, se han promovido reuniones periódicas con los altos funcionarios mayas en el Gobierno.

Uno de los temas recurrentes de estos círculos ha sido la conveniencia de formar un partido político. Hay una creciente conciencia de que no se pueden hacer cambios políticos sin representación parlamentaria. La tentación de formar un partido exclusivamente "maya" está dejando paso al convencimiento de la necesidad de alianzas interétnicas y programas "interculturales". El ejemplo del Comité Cívico Xel-Ju', que desde una plataforma mixta de indígenas y no indígenas ya ha logrado gobernar Quetzaltenango –la segunda ciudad del país- por dos períodos consecutivos, ha pesado mucho. Sin embargo, el Comité no ha aparecido públicamente cuando el 12 de diciembre don Alfredo Tay Coyoy –quetzalteco y ex Ministro de Educación- presentaba ante el Registro de Ciudadanos el *Partido Político de Organización Pluralista de Guatemala – Pop-Gua*[6]. Parece que el Xel-Ju' y otros grupos que lo impulsaban fueron abandonando la iniciativa.

Por otro lado, el partido URNG (Unidad Revolucionaria Nacional Guatemalteca), ex-guerrilla insertada en la vida política, tuvo su Asamblea General en agosto. En el nuevo Comité Ejecutivo Nacional se encuentran al menos 7 mayas y en su directiva se encuentran los tres diputados mayas en el Congreso de la República: Pablo Ceto, Gregorio Chay y Alberto Mazariegos.

La URNG todavía necesita replantearse cuál va a ser su relación con sus aliados históricos del movimiento popular. La experiencia reciente parece mostrar todavía falta de sensibilidad hacia el tema étnico, como cuando se intentó "democratizar" la Alcaldía indígena de Sololá –institución consuetudinaria con una legitimidad propia- y sólo consiguió enfrentar a los indígenas de esta ciudad entre sí. A pesar de su responsabilidad en el fracaso de COPMAGUA aún no ha aclarado su vinculación actual. En junio COPMAGUA se reorganizó,

548

quedando formada sólo por instancias afines a la URNG, con representaciones de xinkas y garífunas[7], pero algunos dirigentes de la URNG dicen desconocer a COPMAGUA.

Al mismo tiempo, se van consolidando nuevas expresiones, como Kaqla' –que reflexiona sobre género, etnicidad y poder a partir de la experiencia personal- o Moloj –dirigida a la formación de mujeres mayas para cargos políticos. También las organizaciones de guías espirituales, como Oxlajuj Ajpop o la Gran Confederación Kaqchikel, que participan en la Comisión Paritaria de Lugares Sagrados.

La visibilidad de los mayas

Las imágenes que los guatemaltecos guardan este año de sus compatriotas indígenas se relacionan con elementos poco agradables, como la niña ch'orti', del departamento oriental de Chiquimula, que murió de desnutrición a finales de agosto. Una de las causas del recrudecimiento del hambre ha sido el derrumbe de los precios del café a nivel mundial, que ha afectado a los campesinos de todo el país, indígenas y no indígenas. Los datos muestran que la desnutrición y la hambruna son un fenómeno mucho más extendido.

También los enfrentamientos por tierras como el de Los Cimientos, Chajul, muestran los conflictos intracomunitarios que se arrastran desde los 80 con las reubicaciones de población y la reorganización de las estructuras comunitarias y su militarización.

Las denuncias al Festival Folclórico de Cobán en julio fue otro hecho significativo. La saliente Rabin Ahau –Hija del Pueblo- denunció discriminación y maltrato de parte de los organizadores, mientras la que iba ser nombrada no aceptó el cargo en solidaridad. Esta actitud, que fue apoyada por diversos grupos de mujeres mayas, hizo tambalear una de las bases simbólicas del turismo de Guatemala y del monopolio de quienes son sus beneficiarios.

Como muestra del descenso de la visibilidad de los mayas y de sus demandas específicas, se puede señalar cómo las marchas campesinas del 12 de octubre, que siempre han concertado la lucha campesina con la resistencia indígena, este año apenas han sostenido reclamos étnicos. Así pasó desapercibida la entrega de la CONIC –Coordinadora Nacional Indígena y Campesina-, de su propuesta de "Ley de Pueblos Indígenas" al gobierno, al final de la manifestación.

Pero quizá lo más espectacular e inquietante para todo el país fueron los "motines" de Totonicapán y de Cobán el 1 de agosto. Los reclamos de la población frente a la inminente aprobación de la subida del IVA llegaron a desatarse en estas ciudades con tal fuerza, que el gobierno declaró el estado de sitio y envió tanques a patrullar

549

las calles. Este levantamiento popular contra la corrupción y el abuso de poder en dos cabeceras municipales de fuerte presencia indígena hizo regresar "el temor al indio". Sin embargo, fue una tensión coyuntural y a los pocos días la situación había regresado a la "normalidad". El Presidente Portillo aprovechó la ocasión con un gesto populista de reconocimiento a la institucionalidad maya, al firmar un convenio con los Alcaldes Auxiliares de Totonicapán.

Notas y referencias

1 Partido fundado y liderado por el ex general Efraín Ríos Montt, responsable durante 1982 y 1983 de las peores masacres cometidas por el Ejército guatemalteco. La Constitución le prohíbe presentarse a las elecciones presidenciales por haber dirigido un golpe de estado por lo que durante las elecciones de 1995 y 2000 se presentó Alfonso Portillo.

2 Misión de Verificación de las Naciones Unidas en Guatemala –MINUGUA. Septiembre 2001. Informe de Verificación, *"Los pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz"*, Pág. 7.

3 Huipil: blusa que forma parte del traje tradicional de la mujer maya. Normalmente es tejida por las mismas mujeres.

4 La Coordinación de Organizaciones del Pueblo Maya de Guatemala –COPMAGUA- surgió en 1994 como instancia común maya para el proceso de paz, y desde 1996 centralizó el trabajo de las comisiones paritarias. Por problemas internos, en el 2000 se retiraron dos de las cinco coordinadoras que la conformaban, quedando sólo aquellas ligadas a la URNG.

5 Al respecto, ver los informes en los anuarios de los años en cuestión.

6 En varios idiomas mayas *"pop"* significa petate y *"gua"*, tortilla, dos elementos de clara identificación indígena.

7 Los xinkas del sur de Guatemala y los garífunas de la Costa Atlántica son grupos lingüísticos nomayas.

NICARAGUA

Desarrollo político y legislativo

El 4 de noviembre del 2001 se efectuaron las elecciones nacionales que comprenden elecciones a Presidente y Vicepresidente de la República, diputados nacionales, diputados departamentales y diputados al Parlamento Centroamericano (PARLACEN).

550

Compitiendo con los dos partidos nacionales hegemónicos, Partido Liberal Constitucionalista (PLC) y el Frente Sandinista de Liberación Nacional (FSLN), participaron dos partidos regionales en las elecciones para diputados departamentales: Yapti Tasba Masraka Nanih Asla Taranka (YATAMA), y el Partido Movimiento de Unidad Costeña (PAMUC). El desempeño más destacado fue de YATAMA, en la Región Autónoma Atlántico Norte (RAAN), obteniendo un 11,3% de los votos regionales, porcentaje insuficiente para la elección de uno de los tres diputados departamentales de esta región autónoma. Cabe señalar que por el PLC fue reelecto el diputado miskito Leonel Pantin Wilson, quien es el único diputado indígena en la Asamblea Nacional.

En el ámbito nacional y regional, bajo la bandera de la Alianza Partido Liberal Constitucionalista (PLC) participaron el Partido Liberal Constitucionalista, el Camino Cristiano Nicaragüense y el Partido Resistencia Nicaragüense (PRN), quienes resultaron victoriosos en los comicios nacionales con un 56% de los votos, seguido por el FSLN con un 42%.

De los cuatro municipios con mayoría poblacional indígena, la Alianza PLC obtuvo una mayoría de votos en los municipios de Waspam y Prinzapolka, pertenecientes a la RAAN, y en el municipio de Desembocadura de Río Grande, en la Región Autónoma Atlántico Sur (RAAS). Por su parte, el FSLN tuvo el mayor porcentaje de votos en Puerto Cabezas.

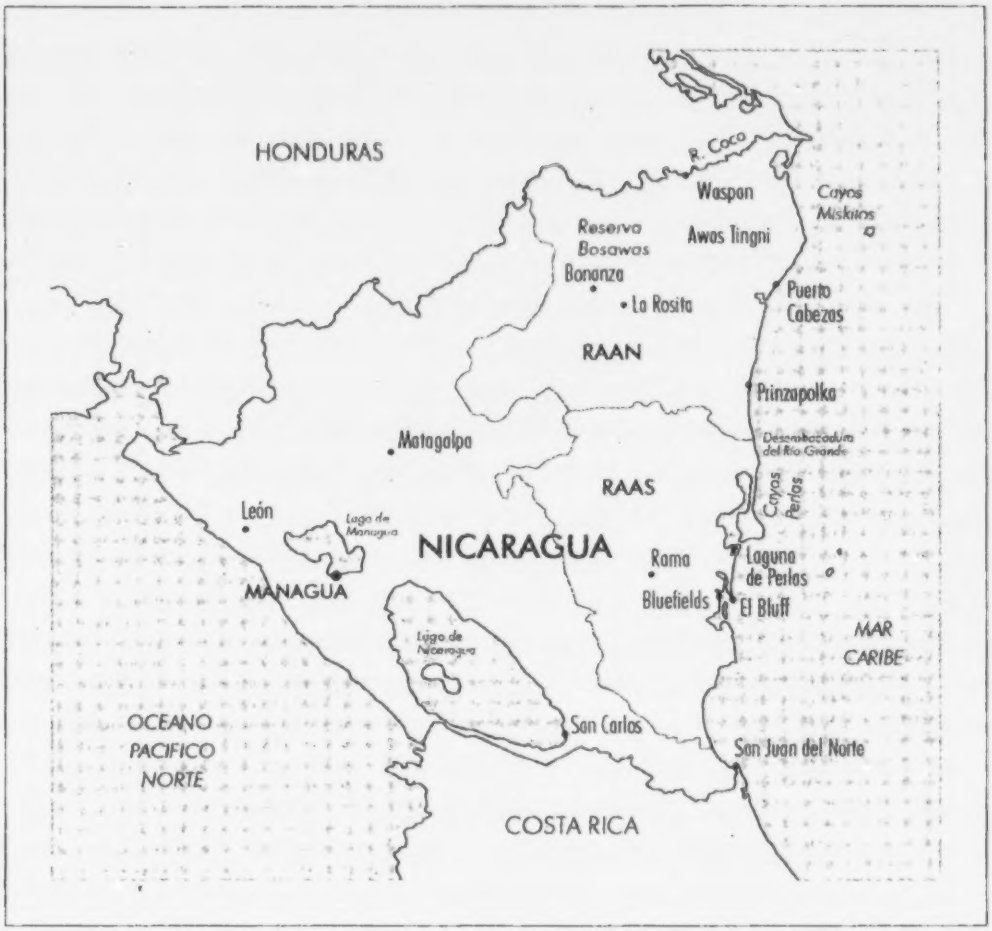
Elecciones regionales 2002

Acorde con lo establecido en la Ley de Autonomía, promulgada en 1987, en 1990 se celebraron las primeras elecciones regionales en la Costa Caribe de Nicaragua. Siguiendo la periodicidad de cada cuatro años, el 3 de marzo del 2002 tendrá lugar la cuarta elección de los dos Concejos Regionales Autónomos, que están conformados cada uno por 45 miembros electos más los diputados regionales. Esta instancia es la máxima autoridad en las dos regiones autónomas, garantizando las leyes correspondientes a la representación de los pueblos indígenas y comunidades étnicas.

A estas elecciones concurren en la RAAN los partidos PLC, FSLN, PAMUC, YATAMA y el PRN. Exceptuando el PAMUC, todos los mencionados también compiten en las urnas electorales de la RAAS.

Los ciudadanos aptos para votar son 108.791 en la RAAN y 74.806 en la RAAS, según las cifras oficiales del Consejo Supremo Electoral (CSE); pero una deficiente organización del CSE, una marcada apatía, especialmente en sectores geográficos con mayoría poblacional mestiza, además de una amplia inconformidad con la marcha del proceso autonómico y una descolorida campaña electoral, hacen presagiar que la abstención electoral en estos comicios será superior al 50%.

551



Aprobación de leyes

En el año 2001 fueron aprobadas varias leyes que afectan directamente la vida de muchas comunidades indígenas. Se destaca la Ley 387, *Ley Especial sobre Exploración y Explotación de Minas*, promulgada por la Asamblea Nacional el 26 de junio del 2001[1]. Posteriormente, el Reglamento de la Ley 387[2] fue emitido por la Presidencia de la República. La principal crítica a esta legislación minera es que privilegia la inversión del gran capital, favoreciendo con derechos de explotación a los empresarios que obtienen concesiones de exploración. Los intereses de la minería artesanal aurífera, conocida como *guirisería* en Nicaragua, queda en segundo plano con respecto a la minería industrial.

Un mayor nivel de polémica ha despertado en la Costa Caribe nicaragüense la *Ley que Declara y Define la Reserva de Biosfera BOSAWAS*, aprobada sin consultas previas por la Asamblea Nacional el 14 de noviembre del 2001[3], lesionando los derechos de participación de los bloques de comunidades localizadas en esa inmensa reserva

BEST COPY AVAILABLE

de más de 7.000 kilómetros cuadrados. Dos bloques de comunidades pertenecen al pueblo indígena mayangna-sumo, Mayangna Sauni As y Mayangna Sauni Bu, además de la comunidad de Sikilta. Por su parte, tres bloques corresponden a comunidades del pueblo indígena miskito: Miskitu Indian Tasbaika Kum, Kipla Sait Tasbaika y Li Lamni Tasbaika Kum.

Sigue pendiente la ratificación por el Gobierno de Nicaragua del Convenio 169 de la Organización Internacional del Trabajo (OIT). Este instrumento jurídico es reclamado con mayor vigor por las comunidades indígenas del centro y norte de Nicaragua.

La autonomía regional

El proceso de descentralización continúa estancado, y las competencias administrativas, económicas, políticas y sociales definidas en el Estatuto de Autonomía (Ley 28), no son asumidas con propiedad por las autoridades regionales. La percepción general es que los concejales regionales actúan en función de la agenda de los partidos a que pertenecen y no de la población que los eligió anteponiendo, de esta manera, los intereses de sus partidos por encima de los intereses de la región. Esta situación es reforzada por la ausencia de voluntad política de los sucesivos gobiernos nacionales por fortalecer el proceso autonómico.

La dramática frustración con autoridades que no trabajan en función de la mayoría poblacional es ilustrada en los resultados de una encuesta del Instituto para la Promoción de la Democracia (IPADE) denominada "Cultura Política, actitud hacia las elecciones y los regímenes de autonomía regional y municipal"[4]. Los datos de esta encuesta, efectuada en septiembre del 2001, destacan que un 43,9% de los encuestados juzga que el Gobierno Regional, tal como funciona, no les sirve en nada, mientras que un 42% opina que les sirve poco.

Aspectos socioeconómicos

El mapa de pobreza extrema

El atraso, la miseria, la discriminación, la marginación han sido las constantes de la vida de los pueblos indígenas. Como efecto de diversos factores concurrentes, al igual que en otros países, en Nicaragua la población indígena se ubica entre los más pobres de los pobres. La evidencia más reciente proviene de la encuesta nacional de hogares sobre medición del nivel de vida, realizado por el Gobierno de Nicaragua en 1998 y cuyos resultados fueron publicados en el 2000 y el 2001. Los datos disponibles reflejan que cuatro de los cinco munici-

553

pios con una mayor brecha porcentual de extrema pobreza se encuentran ubicados en la RAAN[5]: Prinzapolka, Waspam, Bonanza y Puerto Cabezas. El tercer lugar corresponde al municipio de Desembocadura de Río Grande en la RAAS. Exceptuando Bonanza, todos los municipios señalados tienen una mayoría poblacional miskita.

Desastres naturales

El 2001 no estuvo exento de desastres naturales y una vez más los embates de la naturaleza afectaron la RAAN. El fenómeno climatológico más impactante fue un temporal de nueve días, ocasionado por la depresión tropical número 15, que inició a finales de octubre del 2001 y causó graves inundaciones en los municipios de Rosita, Puerto Cabezas, Waspam y Prinzapolka.

El desborde de los ríos Coco (Wangky), Wawa, Lycus, Kukalaya y Bambana afectó a numerosas comunidades indígenas, cuyos poblados están localizados a orillas de los mencionados ríos.

Según datos aportados por el reverendo Norman Bent, Procurador de los Pueblos Indígenas y Comunidades Indígenas[6], 6.192 familias fueron afectadas y más de 3.400 viviendas resultaron con daños, de las cuales 180 fueron destruidas. Las pérdidas de cultivos superaron 20.907 manzanas[7] de maíz, arroz, fríjol, bananos y tubérculos como la yuca y quequisque. Por su parte, el Ministerio de Transporte e Infraestructura calculó en 90 millones de córdobas (aproximadamente $US 6,3 millones) el daño a 696 kilómetros de la red vial de la RAAN.

Cabe mencionar que, de manera similar al pasado, una vez más la capacidad de auxilio a los damnificados fue insuficiente ante la magnitud del desastre.

El proceso de legalización de las tierras comunales indígenas

El marco jurídico-institucional

Durante este período fue poco el avance en la Asamblea Nacional orientado a lograr el consenso de los dos anteproyectos del régimen de propiedad comunal; tanto el presentado por la Presidencia de la República, en octubre de 1998, como el sometido por los Consejos Regionales en septiembre del 2000.

A juicio de algunos analistas, el principal escollo para el avance del proceso es el artículo 1 del Estatuto de Autonomía (Ley 28) que establece: *"Las tierras comunales son inalienables; no pueden ser donadas, vendidas, embargadas ni gravadas, y son imprescriptibles."* Un sector importante de los diputados del partido gobernante no acepta este

554 Cal

marco regulatorio de la propiedad comunal que impide que los territorios o tierras comunales formen parte del mercado de tierras.

El fallo de la CIDH a favor de la comunidad mayangna-sumo de Awas Tingni

El evento de mayor trascendencia a lo largo de 2001 fue el fallo de la Corte Interamericana de Derechos Humanos (CIDH)[8], el 31 de agosto del 2001, a favor de la comunidad mayangna-sumo de Awas Tingni. Esta sentencia inicia una nueva etapa en el prolongado proceso contencioso de la comunidad con el Gobierno de Nicaragua en torno a la propiedad de su territorio ancestral y a los recursos forestales existentes en el mismo.

La CIDH reconoció la legitimidad del reclamo de la comunidad de Awas Tingni y concluyó que el Gobierno de Nicaragua había violado el derecho de propiedad de la mencionada comunidad, por lo que el tribunal impuso al Estado nicaragüense la obligación de delimitar, demarcar y titular el territorio de Awas Tingni. La Corte prescribió que Nicaragua deberá desembolsar la suma de 30.000 dólares en concepto de gastos judiciales e invertir 50.000 dólares en proyectos sociales, en compensación por los daños morales que sufrió la comunidad.

En el comunicado de prensa de la CIDH[9], el Dr. Santiago Cantón, secretario ejecutivo de la Corte, señaló que esta decisión ha trascendido las fronteras de Nicaragua y las Américas y representa uno de los logros más significativos en la protección de los pueblos indígenas a nivel mundial. A juicio del Centro de Recursos Jurídicos para los Pueblos Indígenas (*Indian Law Resource Center*, EE.UU)[10], que asume la representación legal de la comunidad, la sentencia de la Corte es un precedente de gran importancia en el ámbito internacional, además de un instrumento de vital importancia para la defensa de los derechos humanos de los pueblos indígenas en Nicaragua. Según la documentación de este Centro es la primera vez que una comunidad indígena recurre a la jurisdicción internacional para la defensa de sus derechos, y la primera vez que un tribunal internacional reconoce los derechos de los pueblos indígenas sobre la tierra y los recursos naturales.

En cumplimiento de la sentencia de la Corte, en la fecha del 22 de febrero del 2002, el Embajador Lombardo Martínez hizo entrega de un cheque por 30.000 dólares para que la Comisión Interamericana haga entrega de este importe a la comunidad de Awas Tingni, por concepto de costos y gastos en que incurrieron los miembros de esta comunidad y sus representantes. Las partes también acordaron, en esta fecha, presentar un plan de acción para continuar con el cumplimiento de la decisión de la Corte durante la próxima reunión que se realizará en Managua, en la tercera semana de marzo del 2002.

555

Mercantilización de la propiedad comunal

Al igual que el año anterior, también en 2001 las escandalosas transacciones del empresario greco-estadounidense Peter Tsokos constituyen las agresiones más publicitadas contra el régimen de propiedad comunal. Posteriormente a la controvertida venta de 4 de los denominados Cayos Perlas, en la RAAS, el Sr. Tsokos volvió a ser noticia ofertando, por medio de Internet, 6.000 manzanas de tierras que son consideradas comunales, en el municipio de Laguna de Perlas, por la suma de 360.000 dólares. Anteriormente, había procedido a desmembrar 7 lotes en la zona de Monkey Point, más propiamente en Punta de Águila, territorio ancestralmente habitado por indígenas de la etnia rama. Como consecuencia de una serie de recursos judiciales introducidos en Bluefields por representantes del pueblo indígena rama, la jueza Anabel Omeir notificó la prohibición de venta mientras no se dilucide si los indígenas son los dueños o no.

A manera de conclusión

Desde la perspectiva del indigenismo, el hecho más destacado del año fue el fallo de la CIDH en el caso de Awas Tingni, que enciende una nueva luz en el camino de las reivindicaciones históricas de los pueblos indígenas de Nicaragua.

En el año 2002 brota de nuevo la esperanza que los nuevos Consejos Regionales asuman un rol más beligerante y funcional, superando una situación casi parasitaria a expensas del erario público y la subordinación a las directivasde los partidos nacionales hegemónicos. Al brindar su voto mayoritario al PLC, confiando en las promesas del Presidente Enrique Bolaños, un alto porcentaje de la población indígena también renueva su fe de que el nuevo gobierno liberal integre a la Costa Caribe en las políticas nacionales y que proceda a la reglamentación de la Ley de Autonomía, la demarcación y titulación de las tierras comunales y a un control más efectivo sobre la explotación de los recursos naturales. Los siguientes meses revelarán si habrá avances significativos en la dirección deseada o si estas esperanzas y expectativas de los pueblos indígenas y otras minorías étnicas de Nicaragua serán víctimas de otra frustración.

Notas y Referencias

1 *La Gaceta*, Diario Oficial, No. 151, 13 de agosto de 2001.
2 *La Gaceta*, Diario Oficial, No. 4, 7 de enero de 2002.
3 *La Gaceta*, Diario Oficial, No. 244, 24 de diciembre de 2001.

556

4 *La Prensa*, 3 de marzo de 2002.
5 Gobierno de Nicaragua, 2001. "Mapa de Pobreza Extrema de Nicaragua".
6 *La Prensa*, 20 de noviembre de 2001. Posteriormente la depresión tropical número 15 se convirtió en el huracán Michelle, el cual causó daños devastadores a lo largo de su trayectoria, especialmente en la isla de Cuba.
7 1 manzana equivale a 0,7 has. (n.del ed.)
8 Corte Interamericana de Derechos Humanos, Caso de la Comunidad Mayangna (Sumo) Awas Tingni vs. Nicaragua. Sentencia del 31 de agosto de 2001.
9 Comisión Interamericana de Derechos Humanos, Comunicado de Prensa No. 8/02.
10 Centro de Recursos Jurídicos para los Pueblos Indígenas, Comunicado de Prensa No. L/AT/PRESS/1, 23/2/2002.

PANAMA

Panamá ocupa en el concierto de naciones el puesto número 52 del Índice de Desarrollo Humano. Es una posición similar a la que tienen en el continente Trinidad y Tobago (49), y México (51). Es inferior a países considerados de alto desarrollo humano como España (21), Argentina (34), o Costa Rica (41) (Informe de la PNUD-Panamá, *La Prensa*, 2002). Pero cuando se habla de estos indicadores, los índices en rojo apuntan hacia los pueblos indígenas. En ese mismo informe se dice que: "los ngobe-buglé es una de las etnias más castigadas por la pobreza en Panamá. En algunas comarcas, la miseria afecta a más del 90% de sus habitantes. La mortalidad infantil por enfermedades relacionadas con la desnutrición es un fantasma que se pavonea entre los aborígenes". Pero eso no sólo ocurre entre los ngobes, los otros pueblos indígenas están en la misma situación. El desarrollo de los pueblos indígenas existe únicamente en papeles y planes gubernamentales pero nunca en la realidad.

Poblado sin estar en el mapa

Prueba de esta marginación, es lo que un diario tituló "Poblado panameño no está en el mapa". El artículo periodístico decía que:

> *Jirote es un pueblo perdido en el tiempo y el espacio. El poblado no aparece en los mapas de la República de Panamá y sus casi 200*

557

1 Embera Wauman
2 Ngobe-Buglé
3 Kuna

(Ubicación aprox. de los grupos indígenas mencionados en el texto)

habitantes tampoco figuran en el Censo Nacional. Ubicado en la espesa selva bocatoreña (provincia de Bocas del Toro), a más de 10 horas a pie, los indígenas ngobe-buglé no conocen su patria, y ella tampoco sabe que existen. (Panamá América, 2002)

Esto indica lo poco que significa para las autoridades panameñas las comunidades indígenas. Y es que no sólo la miseria acosa a las comunidades indígenas; también los problemas sociales y políticos las afectan directamente. Destacaremos los más importantes ocurridos en 2001.

Tensa situación en la frontera con Colombia

El Plan Colombia y la guerra interna de ese país, ya traspasó las fronteras. Cientos de desplazados colombianos llegan huyendo de la guerra hacia Panamá y para los emberá, wouanan y kuna que se encuentran en la frontera con Colombia (Provincia del Darién y la Comarca Kuna Yala), el año 2001, fue otro año más de incertidumbres y temores.

La enseñanza de parte del Ministerio de Educación en esa región ha sido casi nula este año, debido al temor de los maestros y profesores, que no quieren seguir exponiendo sus vidas, lo cual, alejó

BEST COPY AVAILABLE

también, a muchos niños indígenas a continuar sus estudios. Muchos de esos pueblos han visto el éxodo masivo de sus habitantes hacia la capital del país.

Creación de nuevas leyes a favor de los pueblos indígenas

Dos leyes a favor de los indígenas fueron ratificadas en el 2001-2002 por el gobierno. Ambas realzan la lucha de los pueblos indígenas a través de la historia desde la llegada de los europeos al Continente de Abya Yala.

La *Ley No.5* de enero de 2002 "declara el 12 de Octubre Día Nacional de Reflexión sobre la Situación de los Pueblos Indígenas y, dicta otras disposiciones". Cabe destacar que con esta Ley, Panamá es uno de los escasos países que en toda Abya Yala reconocen el 12 de octubre como un día de "reflexión", destacando la lucha de los pueblos indígenas por preservar su cultura y tradiciones. La Ley fue aprobada después de dos años de discusiones y es una norma legal muy significativa. Aunque no crea derechos, permitirá en un futuro próximo cambios a los textos de la historia nacional, que en estos momentos no son verídicos en cuanto a la existençia de los pueblos indígenas, antes y después de Cristóbal Colón.

Otra es la *Ley No.41* que "declara el 5 de Agosto de cada año, Día Cívico de Conmemoración a Simral Colman (Ologuindinbipilele)". Ologuindibipilele (nombre kuna), llamado por los no indígenas Simral Colman, fue uno de los autores intelectuales de la Revolución Kuna de 1925 que con su sabiduría pudo orientar a la juventud kuna de esa época para hacer frente a la policía colonial que quería "integrar" a los kuna por la fuerza a la cultura occidental o la mal llamada "civilización". La nueva Ley es un reconocimiento que le da el país a uno de los guías espirituales indígenas.

Pueblos indígenas kuna y emberá demandan al Estado panameño ante la CIDH

La Central Hidroeléctrica del Bayano (sureste de Panamá), inició su construcción en 1976, con el financiamiento del Banco Mundial, justamente en el lugar donde habitaban los kuna del Bayano, conocido por la ley como la Comarca Kuna de Madungandi. En sus comienzos, la hidroeléctrica afectó a ocho comunidades kuna y tres emberá. En la inundación desaparecieron además de las comunidades, cementerios, sembradíos y se tuvo que trasladar cientos de animales del

559

bosque a sitios no inundados. El futuro de la economía panameña fue hecho a costa y sacrificio de uno de los sectores más pobres y marginados del país.

Después de haber agotado todos los recursos de diálogo y después de muchos años de exigir soluciones a sus problemas, los indígenas, cansados de tantas promesas, deciden demandar al Estado panameño por incumplimiento de sus obligaciones. Para ello, otorgan poder al Centro de Asistencia Legal Popular (CEALP), y a la Asociación Napguana, para que junto con el Departamento de Derechos Humanos Internacionales del *College of Law* de la *American University*, presentaran en su nombre y representación una Petición por la violación de sus derechos humanos ante la Comisión Interamericana de Derechos Humanos (CIDH). En su petición piden, además, el cumplimiento de los acuerdos suscritos entre el gobierno y los líderes indígenas. Los pueblos indígenas afectados han manifestado que el Estado violó sus derechos humanos fundamentales en los siguientes aspectos:

1. Derecho a la propiedad de la tierra: el embalse afectó las tierras donde las comunidades indígenas estaban establecidas. Además el Estado panameño no ha impedido la invasión ilegal de los no indígenas hacia los territorios indígenas. En el caso de los emberá, el Estado aún no ha legalizado sus tierras, que han estado ocupando desde la reubicación en 1975.
2. Derecho a la vivienda: El embalse artificial destruyó viviendas de comunidades enteras, dejando por varios días a la intemperie a muchas familias indígenas.
3. Derecho a la salud: la represa provocó el estancamiento del agua, lo que ha ocasionado la aparición de nuevas enfermedades, y el incremento de enfermedades mortales como la malaria en la región.
4. Derechos culturales: la creación del lago afectó los derechos culturales como son los sitios sagrados, cementerios, reservorios biológicos, así como los lugares donde los indígenas practicaban su religión.

A pesar de que las comunidades indígenas del Alto Bayano perdieron sus mejores tierras, en la actualidad el Estado panameño no provee energía eléctrica a esas comunidades y las pocas tierras que les quedan son cada año invadidas por colonos. A esto se suma la Carretera Panamericana que pasa por el medio de esas comunidades y que va hacia las selvas del Darién. A pesar de que los pueblos indígenas afectados han hecho todo lo posible para negociar o llegar a un acuerdo con los gobiernos durante los últimos veinte años, independientemente del partido o ideología del mismo, ninguno le ha dado

560[illegible]

unasolución. Por eso la idea de demandar al gobierno ante tribunales internacionales.

La CIDH visita Panamá

La Comisión Interamericana de Derechos Humanos (CIDH) realizó una visita a Panamá los días 6 al 9 de junio de 2001. Una de las actividades de especial importancia durante esta visita fue la gira realizada a la Comarca Kuna de Madungandi, específicamente a la comunidad de Akua Yala. El propósito era efectuar investigaciones y recabar información sobre daños ecológicos, sociales, económicos, culturales, espirituales y religiosos en relación con la denuncia presentada por las poblaciones emberá y kuna de Madungandi, afectadas por la construcción de la central hidroeléctrica de Bayano.

Entre los temas y sugerencias abordadas por la Comisión, se manifestó que es de suma importancia analizar el agotamiento de los recursos legales internos. Por su parte, el Congreso General Kuna de Madungandi y la representación Emberá ratificaron ante los comisionados su petición, consistente en la indemnización por las pérdidas ocasionadas con la obra, la legalización de las tierras emberá y un verdadero plan de desarrollo para todas las comunidades indígenas de Panamá.

En busca de una solución amistosa

La CIDH acogió la demanda mediante la Petición no.12354 del 21 de Septiembre de 2001, *"Pueblos Indígenas Kuna de Madungandi y Emberá de Bayano de Panamá Vs Estado de Panamá"*.

De acuerdo al artículo 41 del Reglamento de la CIDH, los demandantes luego solicitaron discutir una solución amistosa por la violación contenida en la petición original. Esa última petición fue admitida por la CIDH en la audiencia celebrada en noviembre de 2001. Una primera ronda de reuniones se hizo en enero de 2002, y en estos momentos se están llevando las conversaciones para la búsqueda de una solución amistosa entre los indígenas y el gobierno de Panamá.

Nuevas represas en territorios indígenas de Panamá

La recién creada Comarca Ngobe-Buglé (1997) se encuentra amenazada por la futura construcción de dos hidroeléctricas, Tabasara I y II, debido a la aprobación del Estudio de Impacto Ambiental (EIA) por la Autoridad Nacional del Ambiente (ANAM). Estudio que los pue-

561

blos indígenas ngobe y campesinos denunciaron por las falsedades y deficiencias técnicas y por la falta de consentimiento de las autoridades indígenas de la Comarca. Al respecto el abogado kuna, Héctor Huertas interpuso el recurso de nulidad ante la Sala Tercera de la Corte Suprema de Justicia, que accedió a la solicitud de suspensión mediante fallo del 21 de diciembre de 2001 de la construcción de la primera hidroeléctrica hasta tanto se resuelva si el EIA viola la ley de la Comarca y leyes ambientales.

Respecto al mismo tema, el Defensor del Pueblo, Juan Antonio Tejada, se reunió con un grupo de indígenas y campesinos que se oponen a la construcción de los proyectos hidroeléctricos y manifestó que se deben agotar todos los procedimientos de consulta con las comunidades afectadas, y que él estará vigilante a que esto ocurra.

De igual manera, cabe mencionar que la construcción de nuevas hidroeléctricas (represas) amenaza a otros territorios indígenas, como la futura Comarca Naso Teribe en la provincia de Bocas del Toro, en donde se han hecho estudios para la construcción de las hidroeléctricas Teribe 1 y Teribe 2, que afectarán, además, al Parque internacional de la Amistad, ubicado entre Panamá y Costa Rica.

562

AMERICA DEL SUR

BEST COPY AVAILABLE

COLOMBIA

Colombia continuó marcada por la violencia en el año 2001. Las estadísticas son elocuentes:

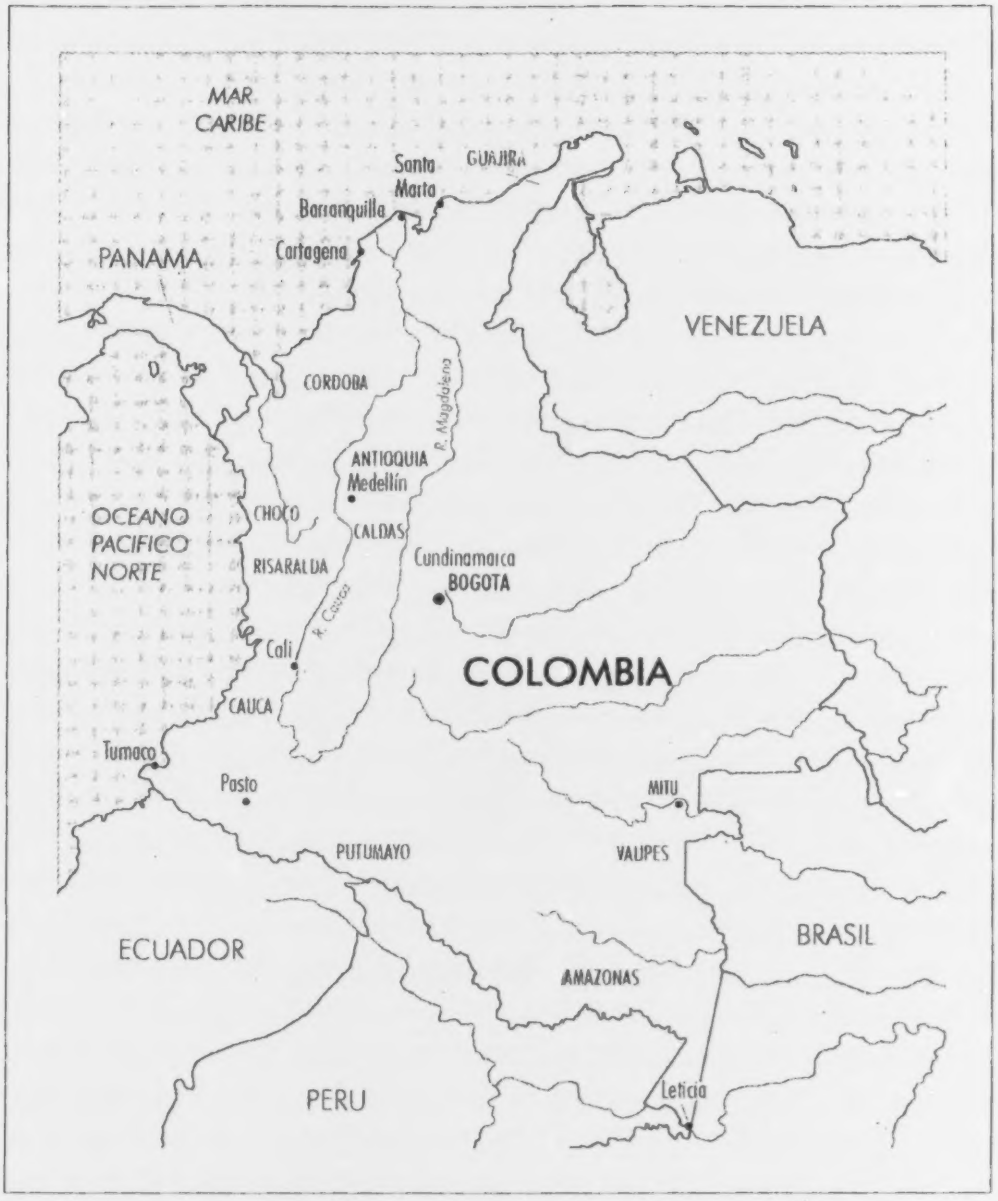
- Por razones sociopolíticas han muerto en los últimos 2 años un promedio de 20 colombianos diariamente. De las 2.529 víctimas muertas durante el semestre octubre 2000-marzo 2001, 2.080 lo fueron por ejecución extrajudicial u homicidio político, 264 por desaparición forzada y 185 por homicidio de población socialmente marginada. Estas víctimas son atribuidas en un 4% a las fuerzas militares, en un 83% a los grupos paramilitares y en un 13% a los grupos guerrilleros. De estas víctimas, 67 eran niñas y niños, 93 jóvenes y 163 mujeres, lo que evidencia que el Estado ni siquiera garantiza protección a los sectores más vulnerables de la población.
- El desplazamiento forzado constituye la crisis humanitaria más grave de la historia de Colombia. De acuerdo con la base de estadísticas de la Consejería para el Desplazamiento y los Derechos Humanos, CODHES, se estima que 31.375 personas habían sido víctimas del desplazamiento forzado en el año 2000. La cifra es similar para el año 2001. Según Amnistía Internacional, en Colombia se encuentra el 20% de todos los desplazados internos que hay en el mundo. Las mujeres constituyen el 56% de la población desplazada, mientras que el 55% son menores de 18 años. El 31% de las mujeres han tenido que asumir la jefatura del hogar por la muerte o abandono de su compañero o cónyuge.

Una guerra desinstitucionalizada

La guerra se agudizó con relación al año anterior como resultado de su carácter cada vez más desinstitucionalizado, lo que se manifiesta en cuatro aspectos centrales:

1. La población civil se encuentra en medio de dos fuegos y es víctima deliberada de la confrontación. Territorios y poblaciones enteros quedan sometidos a una especie de "clientelismo armado" por parte de todos los actores de la guerra para involucrar en sus filas a poblaciones indígenas, campesinas y afrocolombianas que están fuera del conflicto y que hacen ingentes esfuerzos por mantenerse al margen de este conflicto armado.

564



2. En el engranaje de la guerra crece más la importancia de una economía ilegal basada en la producción y comercialización de drogas de uso ilícito, como lo sugiere la coincidencia entre zonas de cultivo de coca y amapola, y zonas de mayor disputa territorial entre guerrilla y paramilitares.

3. La pérdida de autoridad del Estado y la ausencia de proyectos orgánicos alternativos por parte de la insurgencia guerrillera, ha conducido a un estancamiento del proceso de paz y a la expansión permanente de los grupos paramilitares, que están

BEST COPY AVAILABLE

presentes en todo el territorio nacional e incluso en las grandes ciudades.

4. Al cobrar fuerza la intimidación y la dominación por medio de las armas, cada vez se vuelve más ilegítimo el accionar de la insurgencia guerrillera, lo que favorece el fortalecimiento de los grupos paramilitares, que en su avance han arrebatado a las Fuerzas Armadas Revolucionarias de Colombia-Ejército Popular (FARC-EP) territorios estratégicos. Los grupos paramilitares adquieren cada vez mayor reconocimiento en múltiples sectores y se fortalecen aquellos que propugnan por un rompimiento de las negociaciones de paz con las FARC-EP. El candidato presidencial Álvaro Uribe, que ha basado su campaña en la promesa de políticas de "mano dura" contra la insurgencia y propuestas de intervención de tropas extranjeras en el conflicto colombiano, puntea en este momento las encuestas con un 39,5%, por encima del experimentado político liberal Horacio Serpa (30,7%) y de la "independiente" Noemí Sanín (16,9%). Luis E. Garzón, el candidato de la izquierda, llega escasamente al 1%. Cuatro meses atrás Horacio Serpa encabezaba las encuestas con 15 puntos por encima de Álvaro Uribe.

En estas circunstancias el temor de los colombianos es que se imponga un escenario de guerra civil generalizada de enormes proporciones en cuanto a los daños a la infraestructura económica del país y a la violación de los Derechos Humanos, para luego regresar de nuevo a la mesa de negociación, pero con una economía destruida, una sociedad civil aún más debilitada y un país desconfiado.

Casi la totalidad de las víctimas de las masacres perpetuadas en Colombia y los desplazamientos forzados han sido campesinos, indígenas y afrocolombianos. Esta situación viene alterando las estrategias de defensa, control y apropiación territorial de estos grupos para resistir la privatización de tierras impulsada por el modelo neoliberal para la implantación de modelos agroindustriales de palma africana tipo Malaysia, para el desarrollo de macroproyectos mineros o la continua expansión de la frontera agrícola en la Orinoquia, la Amazonía y el Pacífico para beneficio de los terratenientes que han acaparado para fines ganaderos las tierras con aptitud agroecológica. Las *reservas campesinas*, los *resguardos indígenas* y los *territorios colectivos de las comunidades negras* están entonces en el centro de atención de las transnacionales, que buscan jugosas concesiones para la extracción de recursos naturales, incluida su megabiodiversidad[1].

566

Pueblos en resistencia

Todas las luchas exitosas del movimiento indígena se encuentran en peligro, pues la guerra que actualmente se libra en Colombia tiene como escenario principal sus territorios.

Ante la indolencia del Estado, el carácter claramente anti-indigenista de sus políticas económicas y sociales, la imposibilidad de esperar del gobierno comportamientos más cercanos al espíritu de la Constituyente de 1991 y el desconocimiento de la Mesa Nacional de Concertación y la Comisión de Derechos Humanos de los pueblos indígenas, la Organización Nacional Indígena de Colombia, ONIC y las Autoridades Indígenas de Colombia, AICO, rompen relaciones con el gobierno en julio de 2001. Pero las masacres de paeces en el Cauca, el asesinato de dirigentes indígenas en el Alto Sinú, el Cauca, el Chocó, Risaralda, Caldas y Putumayo así como el desplazamiento forzado de algunas comunidades indígenas, los llevó a declararse como *Pueblos en Resistencia.*

Estrategias de resistencia

Para garantizar la sobrevivencia étnica, la preservación del territorio y la fortaleza de los gobiernos propios ante cualquier cambio en la dinámica territorial del conflicto, los pueblos indígenas comenzaron a ensayar diferentes estrategias:

- Establecimiento de Zonas de refugio.
- Establecimiento de Zonas especiales para el desarrollo de proyectos básicos de seguridad alimentaria.
- Acciones directas de las autoridades indígenas ante la ausencia de respuesta por parte de organismos humanitarios gubernamentales y nogubernamentales. Tales son los casos de la búsqueda de Kimy Pernía en la zona paramilitar de Tierralta (Córdoba), o la movilización de protesta de 30.000 indígenas paeces, guambianos, coconucos, etc., hacia Cali, la principal ciudad del suroeste colombiano.
- Los diálogos humanitarios de las autoridades y gobiernos indígenas en zonas de influencia guerrillera.
- Acciones de protección comunitaria, mediante el fortalecimiento de los alguaciles o guardias cívicos indígenas, una institución ya centenaria que poseen todos los pueblos indígenas y que ha sido la base de la estrategia de recuperación de tierras en los años 70 y 80, de control territorial y de recursos naturales en la década pasada, y de control social interno durante toda la historia.

- Creación de espacios de interlocución con otros sectores populares para buscar la unidad frente al conflicto, como el "Territorio de Convivencia, Diálogo y Negociación" en el resguardo indígena de "La María" en el Cauca, cuyo objetivo es reunir allí a diferentes expresiones de la sociedad civil para presentar propuestas de solución al conflicto armado que vive el país.
- Comunicación permanente de los diferentes líderes y organizaciones indígenas para coordinar sus acciones ante la degradación humanitaria de la confrontación armada[2].

Movilizaciones populares en defensa de los poblados

En los últimos meses viene cobrando fuerza la movilización de la población para impedir que los actores del conflicto lleven a cabo actos barbáricos contra sus ciudades y la población civil no combatiente. Este fue el caso del municipio indígena de Caldono en el Cauca. Allí la población salió con música y organizó barricadas para cerrarle el paso a un contingente armado de las FARC que pretendía tomar el casco urbano. Ante esta reacción popular, las FARC tuvieron que retirarse del lugar. Meses antes las FARC habían destruido el cuartel de la policía, pero también la escuela y varias viviendas. Este ejemplo fue seguido por el municipio de Bolívar y también en el Cauca por la población campesina e indígena. En enero del año 2002, se registraron bloqueos de carreteras en el departamento de la Guajira, al norte del país. Allí, pobladores campesinos e indígenas exigieron durante varios días que las Autodefensas Unidas de Colombia, AUC, conocidos como paramilitares, abandonaran la región. Estas y otras acciones de la población en el departamento de Santander, que han impedido que los grupos armados se ensañen con la población civil, muestran por un lado la desesperación de la población ante el "desgano" del Estado de brindarle protección efectiva, pero también que la población está dispuesta a resistir ante la violencia con su movilización, así sea corriendo riesgos.

Congresos de los pueblos indígenas

Aunque estas estrategias de resistencia indígena vienen desarrollándose en varias regiones del país, las organizaciones se percataron de que eran insuficientes para evadir el conflicto armado y su degradación humanitaria. De allí surge la voluntad de buscar un reencuentro con el movimiento popular para discutir la propuesta de un "nuevo país", siguiendo la trayectoria y experiencia de los indígenas del Cauca, que a partir de alianzas con los sectores populares del depar-

568

tamento venían formulando una propuesta de sociedad, en la que los excluidos y oprimidos de siempre se conviertan en actores sociales con capacidad de intervenir y generar propuestas para la paz.

Con este fin las organizaciones indígenas convocaron un Congreso Nacional de los Pueblos Indígenas, que se realizó en diciembre de 2001 en el resguardo indígena de Cota (Cundinamarca). Allí se hicieron presentes cerca de 3.000 indígenas, representando a 63 de los 85 pueblos. La convocatoria a este congreso no era:

> *[U]n encuentro para nosotros, para resolver nuestros problemas, pues hemos dicho que si no hay paz para todos los colombianos no la habrá para los pueblos indígenas....No queremos la paz y la justicia sólo para nosotros, mientras el resto de la gente anda por ahí muriéndose de hambre en las calles.... y pues es lógico que no queremos una paz donde nosotros tengamos que desaparecer* (aparte de la convocatoria).

Con anterioridad al Congreso Nacional, los pueblos indígenas del Cauca habían realizado un Congreso extraordinario, debido a la delicada situación que vienen viviendo por el incremento de las acciones armadas de la guerrilla y los paramilitares en sus territorios, que habían cobrado la vida a unos 50 indígenas en el año 2001. La gota que derramó el vaso fue el asesinato del líder histórico Cristóbal Sécue a manos de las FARC. Esta vez cerca de 20.000 indígenas se concentraron en el Cauca para exigir respeto a sus vidas y autonomía para sus autoridades.

Por su parte, el Congreso Indígena Nacional reafirmó la posición de autonomía territorial de los pueblos indígenas frente a la guerra. Igualmente manifestó su voluntad política, después de algunos años de aislamiento, de avivar el proceso de construcción de un Bloque Social Popular, que como polo alternativo de poder, logre un margen de expresión propia que pueda incidir en el Proceso de Paz y evitar así que ella se construya a espaldas de los indígenas, campesinos y afrocolombianos. En las comisiones los participantes hicieron mucho énfasis en evitar el involucramiento de las comunidades y organizaciones en el conflicto armado y en la exigencia a los actores armados del respeto a las autoridades y a la autonomía de los pueblos indígenas en sus territorios. Igualmente se refrendaron las estrategias de resistencia que se venían desarrollando y se criticó fuertemente a las FARC por descalificar a los guardias cívicos. En general, fue un encuentro que los pueblos anhelaban. Necesitaban hablar de sus temores, manifestar sus inconformidades, nutrirse de sus experiencias, juntar sus voluntades y dar nuevo aliento a sus luchas y movilizaciones. El congreso también decidió por unanimidad lanzar simbólicamente al líder desaparecido, Kimy Pernía Domicó, como su

569

candidato a la presidencia de Colombia. Este congreso que duró 6 días, fue acompañado por indígenas de varios países de Centro y Sudamérica, y varios amigos de Europa, Canadá y Estados Unidos. No obstante, la participación popular se limitó a la presencia de algunos dirigentes sindicales, campesinos y afrocolombianos que participaron en la clausura del Congreso. Esto evidenció una vez más el grado de dispersión del movimiento popular en Colombia, debido a la guerra. Pero también mostró que los indígenas en este tramo trágico de su historia continúan estando solos y que siguen dependiendo cada vez màs de la solidaridad internacional para continuar defendiendo la autonomía que tienen en sus territorios y seguir existiendo como pueblos.

A pesar de estas importantes estrategias de resistencia de los pueblos indígenas y sus organizaciones, en las cuales se muestra unidad y voluntad de seguir haciendo esfuerzos mancomunados para sobrevivir ante la guerra, el panorama político electoral es de una gran dispersión. Se presentan unos 15 candidatos para ocupar 2 puestos de la circunscripción especial para indígenas. En estas elecciones de marzo, representantes auténticos de las luchas del movimiento indígena, compiten con representantes de la politiquería. Aunque los indígenas tienen muy claro quienes son sus verdaderos representantes, existe el peligro de que salgan elegidos con los votos de solidaridad de las grandes ciudades, personas ajenas a sus luchas.

Epílogo

Todavía estaba fresca la redacción de estas notas, cuando escuchamos la alocución presidencial dando por terminado el proceso de paz, después de 3 años y medio de conversaciones. El presidente habló a las 21.20 horas del miércoles 20 de febrero y ordenó a las fuerzas armadas empezar a las 24.00 horas la toma de la zona de distensión. Esa misma noche y antes de la madrugada se habían realizado cerca de 100 misiones aéreas, con una flotilla de 30 aviones, destruyendo con bombas guiadas por láser casi todos los centros logísticos de las FARC (bases y aeropuertos, campamentos de entrenamiento, etc.). En los tres días siguientes se lanzaron más de 250 bombas, entre ellas las MK82 de 500 libras, especiales para romper túneles y refugios bajo tierra.

La población campesina comenzó a abandonar el campo y dirigirse a los centros urbanos, temiendo la llegada de los paramilitares que los acusan de ser colaboradores de la guerrilla. El escenario que se vive es de guerra total y los medios de comunicación transmiten las imágenes de los bombardeos, copiando el estilo de lo que fueron los ataques aéreos a Afganistán. El comandante de la Fuerza Aérea,

570

general Héctor Fabio Velasco, asegura que la guerra aérea nocturna se intensificará con la ayuda de nuevos helicópteros, próximos a llegar al país, equipados con visores nocturnos que permiten tener campos visuales de alta resolución. A pesar de esta euforia por la guerra que invade a las fuerzas armadas y a un alto porcentaje de colombianos, reina la incertidumbre, pues ya se comienzan a reportar víctimas civiles de estos bombardeos.

Nadie sabe lo que va a suceder en el país, pero todo el mundo augura lo peor. El presidente Pastrana terminó su alocución de miércoles con las palabras "....y que San Miguel arcángel nos proteja", encomendando así a un espíritu celestial la suerte del país. El arcángel San Miguel es considerado como el ángel del arrepentimiento, de la justicia y de la misericordia. No sabemos si es a estos atributos de San Miguel arcángel a los que apela el presidente. Porque también la Biblia menciona en el Apocalipsis, que este arcángel fue encargado de dirigir a los ángeles custodios en la lucha contra el demonio y de liberar a los que han caído en poder de Satanás. Y es que el nombre con que fue bautizada por el generalato esta operación: "Operación Tanatos", es un mal presagio. Pero quizás tengan razón, pues la muerte se va a enseñorear del país, por la mezquindad de sus clases dirigentes, la arrogancia de la guerrilla y el aventurerismo de los militares.

Notas

1 Sólo los 85 pueblos indígenas que existen en el país poseen en calidad de resguardos cerca de 20 millones de hectáreas, o sea la quinta parte del territorio nacional.

2 Es en uno de estos encuentros en "La María" que se decidió realizar un Congreso de los Pueblos Indígenas de Colombia.

VENEZUELA

A partir del año 1999, con la aprobación del nuevo texto constitucional, la situación jurídica de los pueblos indígenas en Venezuela ha mejorado notablemente. El reconocimiento de su existencia como pueblos, y de sus derechos ancestrales, ha obligado a los distintos órganos e instituciones del Poder Público a respetar y considerar la presencia

571

indígena, a través de la voz de sus representantes y organizaciones. Muestra de esto es el nombramiento de la diputada indígena wayyù, Noeli Pocaterra, como vicepresidenta de la Asamblea Nacional, en una disputada negociación que hizo sentir el peso de los tres votos indígenas en la toma de decisiones dentro del Parlamento venezolano.

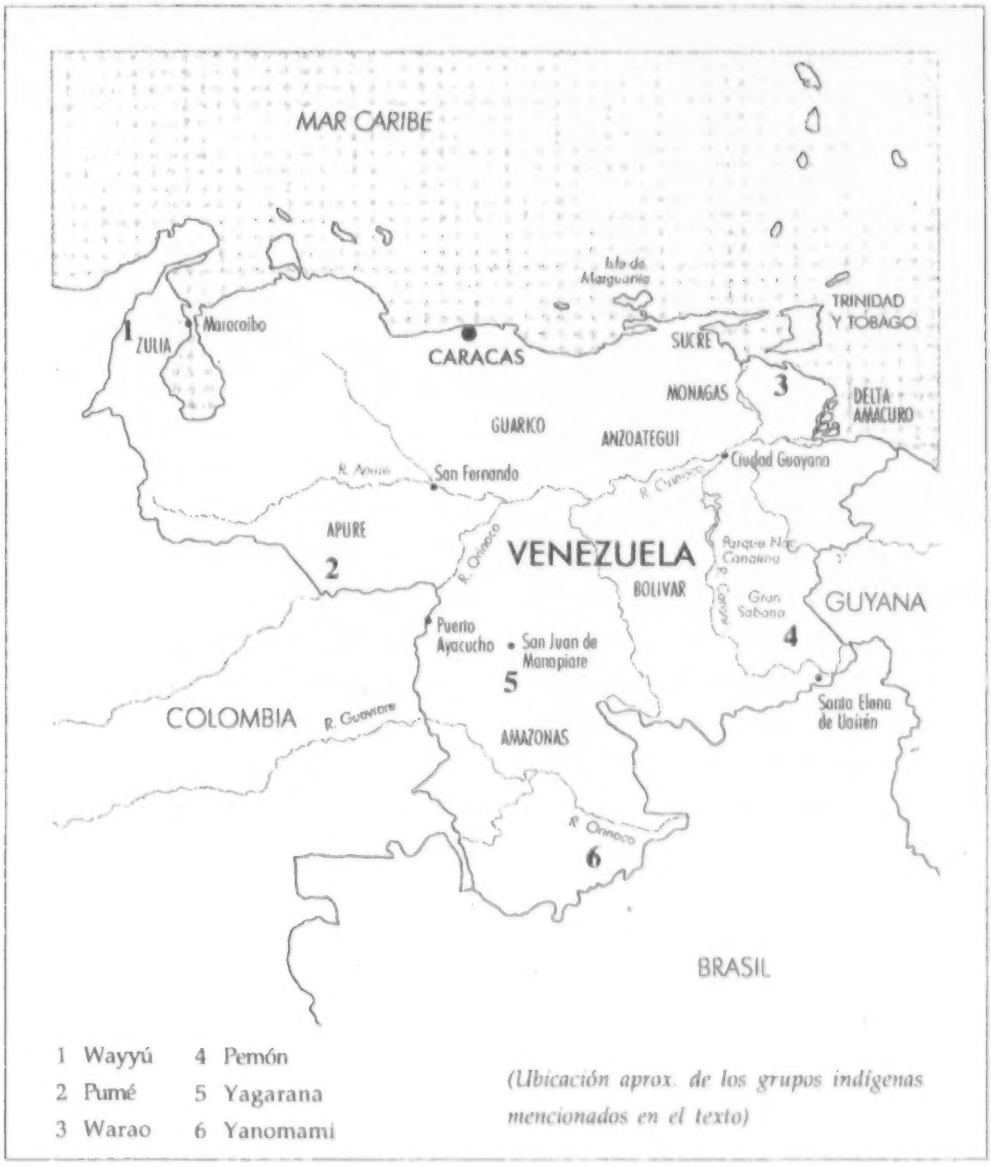
A pesar del panorama legislativo favorable, algunos hechos acaecidos durante el lapso que abarca el presente informe, ponen en evidencia la necesidad de no perder espacios dentro de las estructuras políticas del Estado. A este respecto la representante wayyú, en la sesión solemne celebrada en la Asamblea Nacional el 5 de julio de 2001, con motivo de la celebración de la firma del Acta de Independencia, leyó dicha Acta y luciendo una batola guajira y un pañuelo en su frente expresó: "Eso significa que estoy en pié de lucha"[1].

Anteproyecto de Ley Orgánica de Pueblos y Comunidades Indígenas

En diciembre del 2001 se entregó a la Asamblea Nacional, para su discusión en plenario, el anteproyecto de la Ley Orgánica de Pueblos y Comunidades Indígenas con la finalidad de desarrollar las normas constitucionales y el Convenio 169 de la OIT, referidos a los derechos de los pueblos indígenas, dentro del marco de la Agenda Legislativa de la Comisión Permanente de los Pueblos Indígenas. Este anteproyecto fue elaborado a partir de un primer borrador y su resultado final fue producto de varios talleres y procesos de consulta -con los pueblos y comunidades indígenas- realizados en el segundo semestre del mismo año, en los estados Amazonas, Anzoátegui, Apure, Bolívar, Delta Amacuro, Monagas, Sucre y Zulia. Estos talleres y consultas fueron organizados por la Asamblea Nacional y con la participación de diversos expertos indigenistas y organismos colaboradores como Gobernaciones y Consejos Legislativos estadales, Defensoría del Pueblo, Procuraduría Agraria Nacional. La finalidad era conocer e incluir las observaciones en el texto consultado y lograr que el mismo refleje el espíritu de los derechos de los pueblos indígenas consagrados en la Constitución de la República Bolivariana de Venezuela.

En dicho texto se desarrollan aspectos como el hábitat y tierras de los pueblos y comunidades indígenas, cultura, idioma, economía, propiedad intelectual colectiva, participación política y ciudadana, régimen de educación intercultural bilingüe, salud y medicina tradicional, jurisdicción, y se prevé la creación del Instituto Nacional de los Pueblos Indígenas como ente autónomo dentro del estado, que les permite controlar y decidir sus propias prioridades de desarrollo económico, social y cultural

572



Constitución del Estado Amazonas

En el año 2001 fue sometido a discusión, en el seno del Consejo Legislativo Estatal, un anteproyecto de Constitución del Estado Amazonas, en el que no se tomó en cuenta la opinión de las organizaciones indígenas ni de los representantes del sector que forma parte de las diversas instancias públicas regionales, obviando el aspecto pluricultural y multiétnico de la región en su norma fundamental.

Por ese motivo, en junio de 2001 se reunieron en Puerto Ayacucho representantes de la Organización Regional de Pueblos Indígenas del

BEST COPY AVAILABLE

Amazonas, ORPIA, Defensoría del Pueblo, los diputados indígenas Guillermo Arana y Wilson Lara y los alcaldes indígenas de los municipios Manapiare y Autana, para elaborar una propuesta a ser incluida en dicho texto legal. La propuesta trata principalmente de los aspectos que inciden en la existencia de los pueblos y comunidades indígenas, como la declaración del Estado Amazonas como entidad política multiétnica y pluricultural que garantice la diversidad étnica y cultural representada por los pueblos y comunidades indígenas y noindígenas que habitan en su territorio y el uso de los idiomas indígenas como idiomas oficiales en la región, junto con el castellano, entre otros. A pesar de esto, en el seno del ente legislativo regional se aprobó en primera discusión el anteproyecto anterior sin incluir dicha propuesta, lo que pone en peligro la consecución de derechos ancestrales de los pobladores originarios del Amazonas venezolano. Actualmente se espera que la propuesta sea incluida en la segunda y definitiva lectura.

El proceso de demarcación

Durante el año 2001 se dieron pasos importantes para la realización del proceso nacional de demarcación del hábitat y tierras de los pueblos indígenas, a raíz de la aprobación de la *Ley de Demarcación y Garantía del Hábitat y Tierras de los Pueblos Indígenas* (ver Venezuela en *El Mundo Indígena 2000-2001*). En esta se regula, por primera vez en Venezuela, el derecho de las comunidades indígenas a la propiedad colectiva de sus tierras.

Dentro de este contexto, el 7 de agosto del 2001, el Presidente de la República decretó la creación de la Comisión Nacional de Demarcación, presidida por la Ministra del Ambiente y de los Recursos Naturales, Ana Elisa Osorio Granado, y conformada por un total de 16 miembros, designados de acuerdo a los mecanismos tradicionales de consulta e integrada también por los Ministerios del Ambiente y Recursos Naturales, Educación Cultura y Deportes, Defensa, Relaciones Exteriores, Energía y Minas, Producción y Comercio e Interior y Justicia.

Esta Comisión tiene por objeto promover, asesorar, supervisar, ejecutar y coordinar todo lo relativo al proceso de demarcación del hábitat y tierras de los pueblos y comunidades indígenas, para lo cual el 17 de enero del 2002, en ejercicio de sus atribuciones, aprobó el Reglamento Interno de Funcionamiento. Este reglamento es obligatorio tanto para los miembros de dicha comisión como para los integrantes de las Comisiones Regionales y Locales, las que serán órganos auxiliares de gestión a estos niveles.

574

A pesar que no se ha cumplido el plazo establecido en la Constitución para la realización de la demarcación de las tierras indígenas, que era de dos años a partir de diciembre de 1999, las alianzas estratégicas, simpatías y espacios dentro del Poder Público Nacional, estatal y municipal, crean condiciones que favorecen y garantizan el avance del proceso. En los estados Amazonas y Bolívar las etnias piaroa y yekuana llevan adelantados procesos de autodemarcación que, según la Ley, serán revisados y tomados en cuenta.

Situación del régimen de educación intercultural bilingüe

En el mes de junio del año 2001 el anteproyecto de la *Ley de Educación de los Pueblos y Comunidades Indígenas y Uso de sus Idiomas* avanzó, a través de un proceso de consultas en los estados con población indígena, hasta su novena edición, en la que se busca desarrollar por vez primera el derecho a una educación propia, ya que el Régimen de Educación Intercultural Bilingüe que hasta ahora se ha implementado en Venezuela, atiende a las particularidades socioculturales, valores y tradiciones de estos pueblos, pero desde el paradigma occidental de educación, que privilegia el aprendizaje en el marco espacial de la escuela.

En este anteproyecto se define la educación propia o tradicional como "los sistemas de crianza y socialización propios de cada pueblo y comunidad indígena, mediante los cuales se transmiten y recrean los elementos constitutivos de su cultura". En este marco, durante el año 2001 y principios de 2002, se publicaron las Guías Pedagógicas Pemón y Yekuana, diseñadas para los docentes como el premier paso para la reforma del plan de estudios, coordinado por la Dirección de Asuntos Indígenas (DAI) del Ministerio de Educación, Cultura y Deportes y patrocinadas por UNICEF.

En el seno de la Comisión Permanente de Pueblos y Comunidades Indígenas se realizó también, durante este período, un diagnóstico de la situación educativa luego de 22 años de aplicación del Régimen Intercultural, que evidencia graves carencias, representadas en el bajo nivel de alfabetización de las comunidades warao, por ejemplo, y la situación de crisis de la DAI, órgano ejecutor de este sistema. A este respecto se acordó, luego del análisis: exigir la declaratoria de emergencia de los pueblos indígenas, exigir al Ejecutivo nacional un decreto de reorganización de la DAI que tome en cuenta a la sociedad civil involucrada con temas indígenas y declarar a la DAI en período de transición hasta que la Ley Orgánica de Pueblos y Comunidades Indígenas cree un órgano rector en este área.

575

Acciones por el respeto al derecho de propiedad intelectual colectiva

Las comunidades indígenas organizadas del Amazonas, representadas por ORPIA, elevaron su voz de protesta en contra de diversos proyectos científicos que se han venido realizando durante los últimos tres años, donde no se respetaron los derechos de propiedad intelectual colectiva de estos pueblos. Varias universidades extranjeras y nacionales realizaron sus experimentos e investigaciones sin tomar en cuenta a los pobladores originarios de los territorios y, lo que es más grave, los han utilizado como objeto de estudio, sin consultar acerca de su opinión.

Es por esto que en septiembre de 2001 ORPIA presentó ante el Servicio Autónomo de Propiedad Industrial, adscrito al Ministerio de Producción y Comercio, una propuesta para la valoración, respeto y protección de los conocimientos indígenas ancestrales relacionados con los recursos genéticos, biodiversidad, innovaciones y prácticas tecnológicas.

En dicha propuesta se exige a la Asamblea Nacional la agilización del proceso de reglamentación de la Ley de Diversidad Biológica y se establece todo un mecanismo de consulta para obtener los permisos necesarios por las instituciones científicas interesadas en realizar investigaciones en el área, representadas en el ámbito nacional por los Ministerios de Ciencia y Tecnología, Educación Cultura y Deportes, Defensoría del Pueblo, Consejo Nacional del Indio; a nivel estatal por las diversas organizaciones indígenas regionales y de base legítimamente reconocidas, autoridades de resguardo ambiental y Consejos Regionales de Ciencia y Tecnología y, en el ámbito local, por las Asambleas Generales Comunitarias, las cuales, según la propuesta, representan la instancia más válida para cualquier tipo de autorización, permiso y otro tipo de solicitud de acceso a conocimientos ancestrales y recursos genéticos de propiedad colectiva.

La importancia de esta propuesta es que aún cuando no ha sido reglamentada la ley en dicha área se ha generado un sentimiento de respeto en las distintas instituciones científicas y académicas hacia la opinión de las comunidades organizadas en lo que respecta a la propiedad intelectual de sus recursos genéticos y conocimientos ancestrales. En este lapso, se llevaron adelante algunas consultas para la realización de diversos proyectos ante organismos gubernamentales y no-gubernamentales en el ámbito nacional y regional y las comunidades indígenas, bajo la mirada atenta de ORPIA, como organización de base legítimamente reconocida en la zona.

Además, la Comisión Permanente de los Pueblos Indígenas de la Asamblea Nacional invitó al periodista norteamericano Patrick Tierney,

quien denunció en su libro *Darkness in El Dorado*[2] la investigación patrocinada por la Comisión Americana de Energía Atómica en la década de los sesenta con población yanomami, para que expusiera en el seno del parlamento los hechos. Este periodista estuvo acompañado de José Seripino y Alfredo Aherowe, representantes del pueblo yanomami, quienes estuvieron entonces en la zona y declararon conocer al antropólogo Napoleón Chagnon, responsable de estas investigaciones. En ese momento se acordó solicitar al plenario de la Asamblea Nacional implementar acciones concretas para reparar el daño causado. Asimismo se acordó, junto con la DAI, la suspensión temporal de permisos de investigación en la región del Alto Orinoco. Aún así, hasta ahora las autoridades responsables de estas denuncias no han hecho ningún adelanto al respecto.

Tendido eléctrico a Brasil

La oposición indígena en contra de este proyecto no cesó durante el año 2001. En el mes de marzo surgieron nuevos enfrentamientos por parte del ejército y las comunidades pemón de Vista Alegre y Kamoiran, por la instalación de nuevos puestos militares en el Parque Nacional Canaima y la presencia amenazante de funcionarios del Ejército en territorios ocupados por los pemones, lo que obligó a estos indígenas el día 20 de marzo a cerrar la carretera que conduce a Santa Elena de Uairén. Posteriormente y al intentar establecer el diálogo con el Ejército el día 22, fueron agredidos con bombas lacrimógenas y perdigones, sindo herido de gravedad uno de los habitantes de la comunidad y siendo arrestado de manera ilegal su líder Silviano Castro. Esto provocó una acción urgente de la Asociación de Amigos en Defensa de la Gran Sabana AMIGRANSA, el Programa Venezolano de Educación-Acción en Derechos Humanos y demás organizaciones de derechos humanos, ambientalistas e indígenas con el objeto de sensibilizar a todos los sectores de la sociedad civil, evitar los atropellos en contra de los habitantes originarios de la Gran Sabana y detener el deterioro de este Patrimonio Natural de la Humanidad.

A pesar de la férrea oposición de las comunidades indígenas del estado Bolívar en contra del sistema de transmisión al sureste, y del hecho que en el mes de febrero un informe de la Subcomisión de Parques de la Asamblea Nacional destacó las fallas de este proyecto, las que pueden resumirse en que es inconstitucional e ilegal, representa pérdidas económicas a la Nación y constituye un atropello a las comunidades indígenas, éste finalmente se inauguró. Aún cuando el actual Presidente de la República, Hugo Chávez, apoyó en su campaña electoral el "No al tendido eléctrico", y paradójicamente en este

577

momento histórico en el que el movimiento indígena tiene representación en diversas instancias del Poder Público y se le han reconocido sus derechos ancestrales en el ámbito constitucional, las protestas de grupos ambientales y organizaciones indígenas no fueron tomadas en cuenta y finalmente el lunes 13 de agosto de 2001 se encendiron los transformadores para surtir de energía al norte de Brasil.

Ante la resistencia pública que se ha generado, la Ministra del Ambiente Ana Elisa Osorio, ordenó la realización de un estudio de impacto sociocultural a la Universidad Central de Venezuela, el cual, al finalizar el presente informe, aún no había sido publicado. Cabe resaltar que el mismo se realiza sin detener la puesta en funcionamiento del tendido y sin tomar en cuenta a las comunidades afectadas.

A este respecto el diputado indígena por las etnias de los estados Bolívar, Delta Amacuro y Monagas y Presidente de la Federación Indígena de Bolívar, José Luis González, quien lideró primero la oposición al tendido y luego aceptó un acuerdo con el Gobierno para paralizar las acciones en contra del proyecto a cambio de ciertos compromisos gubernamentales con los afectados, aclaró:

> *El presidente Hugo Chávez nos dio participación en la Asamblea Nacional Constituyente y aprobó el capítulo indígena en la Carta Magna. Pero no debe interpretarse como que, a cambio, dejamos que pase el tendido. Esa no es la razón. Indistintamente de que lo haya aprobado o de que en sus discursos nombre a los pueblos indígenas, hay que ver si las reivindicaciones se hacen realidad. Nosotros estamos cargados de mucha paciencia. Una vez más cedemos, pero también para utilizar este argumento cuando llegue el momento*[3].

Este acuerdo (ver *El Mundo Indígena 2000-2001*) fue visto como una ruptura del movimiento indígena, aunque para este líder no fue más que un momento para evaluar la situación de la organización y establecer un compás de espera, sin que esto signifique que se está claudicando en la lucha. Lo cierto es que la inauguración del tendido eléctrico constituye una fractura entre el discurso político que nombra la existencia de los pueblos y comunidades indígenas como prioridad y los poderosos intereses económicos nacionales y extranjeros que finalmente abrieron la puerta a este megaproyecto.

Invasión de tierras en el estado Amazonas

Finalmente, y después de tres años, se logró la reubicación de las 200 personas de la Asociación Diñaku, quienes en el año 1997 invadieron un sector de la zona protectora de la cuenca del río Cataniapo, territo-

578

rio de las comunidades indígenas Manuare y Carinagua, causando un grave daño ambiental y afectando directa e indirectamente a las comunidades indígenas mencionadas y a toda la población de la ciudad de Puerto Ayacucho, siendo el Río Cataniapo la fuente principal de abastecimiento de agua potable de la zona. En este momento se realiza el cálculo de la indemnización a pagar por los responsables de este delito, el cual se hará sobre la base del daño ecológico causado.

Otro caso es el de la etnia yabarana, con apenas 300 integrantes, que exigió a través de la Organización Yabarana del Alto Parucito OIYAPAM, la expulsión de un terrateniente español ubicado en su territorio desde hace más de 20 años. Luego de un largo proceso, las autoridades agrarias dictaminaron la obligación de esta persona de abandonar el territorio. En vista de que no se ha hecho efectiva la partida de este invasor del municipio Manapiare, a quien se le dio dos años para desalojar el área, OIYAPAM y representantes de otras etnias se dirigieron a la presidencia del Instituto Agrario Nacional, para reclamar por la decisión inconsulta de este organismo, que, a solicitud del invasor, le concedió dos temporadas secas para la venta sin pérdidas de su ganado, lapso que puede extenderse a más de 24 meses, lo que significa una burla al derecho de las pobladores originarios de estos territorios. Al terminar el presente informe no se había decidido sobre la revocatoria de dicha decisión.

Conferencia yanomami

En noviembre de 2001 se realizó por primera vez una conferencia general del sector yanomami, denominada Conferencia Shakita, por celebrarse en este sector del Alto Orinoco, surgida por la necesidad de concretar acciones acerca de la polémica generada por la publicación del libro *Darkness in El Dorado* de Patrick Tierney y organizada por la Comisión Yanomami de la Vicepresidencia de la República.

Dicho encuentro permitió que alrededor de 700 integrantes de la etnia, incluidos los *shabonos* intermedios, se reunieran y expresaran sus opiniones acerca de aspectos tan importantes como salud, participación política, ambiente y educación, logrando la firma de actas compromisos con las autoridades gubernamentales y no-gubernamentales asistentes, cuya actividad incide en la existencia de este pueblo, en puntos como la creación del municipio yanomami, otorgamiento de permisos para proyectos de investigación, demarcación de tierras, acceso a la educación intercultural bilingüe, formación de docentes yanomami y ejecución del Plan de Salud para el Pueblo Yanomami, el cual forma parte del acuerdo reparatorio al que está obligado el Gobierno Nacional ante la Comisión Interamericana de Derechos Humanos, a raíz de la Masacre de Haximú en 1993.

Se incluyó también la necesidad de continuar la investigación acerca de las denuncias de Tierney sobre experimentos genéticos con integrantes de la etnia yanomami para lo cual se procederá a la traducción del texto inglés al español. Se hizo mención también a la interpelación hecha a este periodista norteamericano en la Asamblea Nacional y a la suspensión temporal de los permisos de investigación en la región del Alto Orinoco por parte de la DAI.

Situación de desplazamiento y violación de derechos

La grave situación de los warao, ubicados en los estados Delta Amacuro y Monagas, ha provocado un gran desplazamiento de estos indígenas a zonas urbanas, como consecuencia de una política de extracción indiscriminada de sus recursos naturales y la implementación de un modelo de desarrollo que ha lesionado la forma de vida de estos pueblos, obligándolos a vivir en precarias condiciones de salud, educación y calidad de vida. Los líderes de una comunidad han denunciado que muchos de sus hermanos habían muerto por falta de asistencia médica, ya que hace más de tres años no se hacen consultas médicas por falta de personal. Entre las enfermedades que más muertes causan están la tuberculosis, diarreas, vómitos, dengue y paludismo. La Comisión Permanente de Pueblos y Comunidades Indígenas elaboró un Informe sobre la situación de los pueblos indígenas, en que se solicita se declare en situación de emergencia al pueblo warao. Sin embargo hasta ahora no ha habido ningún adelanto significativo.

Otro caso de desplazamiento evidente es el protagonizado por los pueblos yukpa y bari de la Sierra de Perija (estado Zulia) quienes, a raíz de la detención de algunos de sus integrantes por parte de paramilitares colombianos en los meses de enero y febrero del 2001, han empezado a desplazarse de la frontera, dada la inexistencia de una política de seguridad de estas zonas que tenga en cuenta la existencia de estos pueblos. Además, este pueblo ha sido acosado por los terratenientes y ganaderos de la zona, que se han ido apropiando de los mejores terrenos para la siembra, lo que los ha llevado a arrinconarse contra las lomas de la Sierra, en donde sufren de la escasez de agua debido a la sequía de los manantiales.

Pero el caso más grave es el presentado en el estado Apure en el mes de julio, cuando una familia pumé, de 4 personas, fue masacrada por ganaderos de la zona, en un intento de sacarlos del territorio. Los asesinos están siendo procesados, luego de confesar abiertamente su crimen.

Sin duda que, a la luz de lo expuesto, el panorama para los pueblos indígenas venezolanos puede parecer contradictorio y con-

580

fuso, pueblos reconocidos como tales en el ámbito jurídico, con derechos específicos que asegurarían su subsistencia y calidad de vida, con representación en diversas instancias del Poder Público, pero que en la práctica han sufrido y siguen sufriendo la ausencia de medidas y acciones que concreten los principios constitucionales y legales que les han sido reconocidos, situación que se refleja en los atropellos que sigue sufriendo su gente y en la falta de conciencia del resto de la población sobre el respeto debido a sus formas ancestrales de vida.

Notas y referencias

1 *El Nacional*, 6 de julio de 2001.
2 **Tierney, Patrick. 2000.** *Darkness en El Dorado*. New York: W.W.Norton & Company.
3 *El Nacional*, 19 de agosto de 2001.

PERÚ

La primera mitad de 2001 se caracterizó por el impecable gobierno de transición de Valentín Paniagua Corazao, un político cusqueño del partido Acción Popular. Después de los 10 años de gobierno de Alberto Fujimori (ver El Mundo Indígena 2000-2001), su posterior fuga del país y el encarcelamiento del todopoderoso asesor Vladimiro Montesinos, el gobierno de Paniagua se destacó por restituir instituciones fundamentales para un Estado democrático de derecho y abrir nuevos canales para la concertación y la participación ciudadana.

En las elecciones presidenciales de junio de 2001, Alejandro Toledo Manrique venció en la segunda vuelta. Toledo es un indígena del pueblo andino de Cabana, departamento de Ancash. Su esposa, Eliane Karp, belga-francesa que además de antropóloga y conocedora de la cultura andina habla el quechua y manifiesta una especial vocación personal de trabajar en temas de cultura e indígenas.

Inicio de un diálogo fructífero entre el Estado y los pueblos indígenas

A inicios de febrero una delegación representativa de los pueblos indígenas de la selva central, organizada por la Asociación Regional

581

de Pueblos Indígenas, ARPI, expuso al Presidente Valentín Paniagua la grave situación de vulnerabilidad que sufren los pueblos indígenas amazónicos y efectuó una serie de peticiones.

A partir de esta iniciativa se creó la Comisión Especial Multisectorial para las Comunidades Nativas y la Mesa de Diálogo y Cooperación para Comunidades Nativas. Las organizaciones indígenas regionales afiliadas a la Asociación Interétnica de Desarrollo de la Selva Peruana, AIDESEP, decidieron formar la Comisión Indígena Nacional de la Amazonía (CINA) para facilitar el proceso de diálogo.

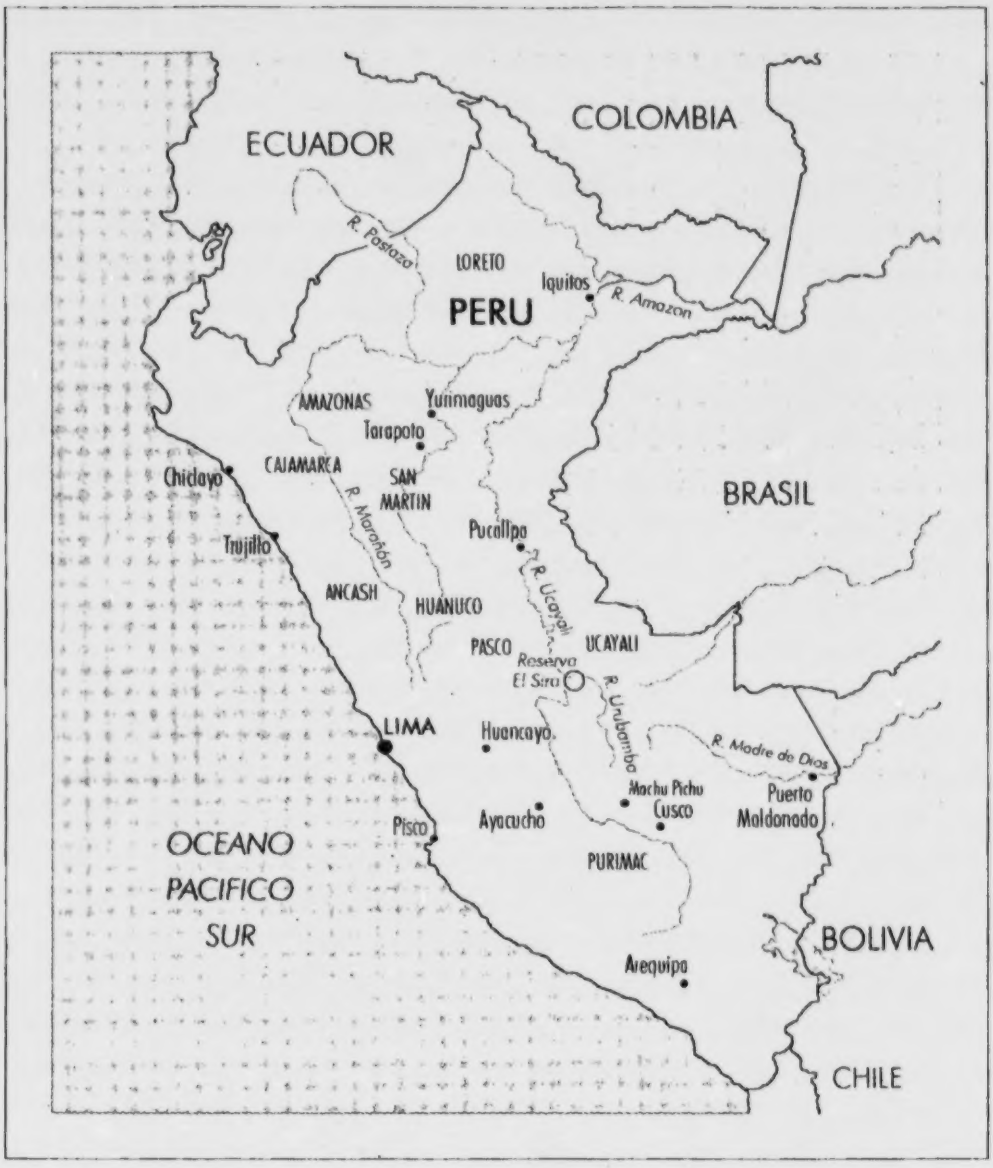
El proceso seguido a partir de esa experiencia ha sido sumamente valioso e inédito porque permitió un fructífero trabajo colectivo entre el Estado, ONGs y organizaciones indígenas. Su resultado más significativo ha sido el Plan de Acción para asuntos prioritarios, primer documento de políticas públicas para pueblos indígenas de los que se tenga noticia en el Perú. Uno de los logros efectivos del trabajo indicado fue la creación oficial de la Reserva Comunal El Sira, una importante área boscosa de 616.413 has ubicada en los departamentos de Huánuco, Pasco y Ucayali, que se distingue por albergar una gran riqueza y diversidad biológica. Esta reserva contribuirá a la supervivencia y desarrollo de los pueblos indígenas asháninka, yanesha, asheninka y shipibo, entre otros.

En el dispositivo de la creación de la Reserva, el Estado reconoce y protege el derecho al tradicional acceso que siempre han tenido las comunidades indígenas amazónicas a dicho ámbito para sus actividades de subsistencia y su promulgación es "para asegurar su desarrollo en armonía con sus valores sociales y culturales". Además de la Reserva del Sira, otro logro colateral ha sido la promulgación del Reglamento de la Ley de Áreas Naturales Protegidas que contiene un régimen especial para las reservas comunales.

El 24 de julio, la Comisión Especial Multisectorial para las Comunidades Nativas presentó públicamente el Plan de Acción para los Asuntos Prioritarios de las Comunidades Nativas. Dicho plan contiene acciones específicas a favor de los pueblos indígenas y que fueron consensuadas entre el Estado y la sociedad civil mediante la Mesa de Diálogo y Cooperación para Comunidades Nativas. El Plan de Acción contiene acciones de gobierno orientadas al cumplimiento de ocho grandes objetivos prioritarios definidos en el decreto de creación:

1. Garantizar los derechos de propiedad de la tierra y la seguridad jurídica de las comunidades nativas de la Amazonía.
2. Ampliar la educación intercultural bilingüe a todas las comunidades nativas y en todos los niveles: preescolar, primario, secundario y superior.
3. Construir un sistema intercultural de salud y ampliar la cobertura de la salud pública entre las comunidades nativas.

582



4. Construir condiciones de paz y seguridad para las comunidades nativas de la selva central.
5. Asegurar la participación de los pueblos indígenas en el manejo y en los beneficios de las áreas naturales protegidas.
6. Garantizar el acceso, uso y participación en los beneficios por parte de las comunidades nativas en el aprovechamiento sostenible de los recursos naturales de su entorno y la prevención de daños ambientales y sociales negativos.
7. Proteger a los pueblos indígenas en aislamiento voluntario.
8. Respetar y proteger los conocimientos colectivos de los pueblos indígenas.

583

BEST COPY AVAILABLE

A fin de asegurar la continuidad del diálogo y ante la falta de tiempo para culminar el Plan de Acción para los asuntos de largo plazo (no prioritarios) el Presidente Valentín Paniagua expidió el Decreto Supremo 072-2001-PCM mediante el cual se creó la Mesa de Diálogo Permanente para la solución de los problemas de las Comunidades Indígenas de la Amazonía peruana. Sin embargo, hasta el mes de abril del 2002, luego de 9 meses, de gobierno de Alejandro Toledo, aún no se había constituído.

¿Es posible un gobierno peruano de "todas las sangres"?

El 28 de julio asumió Alejandro Toledo con el lema: Por un gobierno de "Todas las Sangres", en alusión a una emblemática obra del escritor indígena José María Arguedas[1]. El día 29, Toledo hizo pública la Declaración de Machu Picchu sobre la Democracia, los Derechos de los Pueblos Indígenas y la Lucha contra la Pobreza, suscrita por los Jefes de Estado de los países andinos (Bolivia, Ecuador, Colombia, Perú y Venezuela) durante la simbólica asunción de mando presidencial realizada en la ciudadela de Machu Picchu.

En dicha declaración se establece el compromiso de promover y proteger los derechos y libertades fundamentales de los pueblos indígenas; impulsando en ese sentido la elaboración y aprobación de la Declaración Americana sobre los Derechos de los Pueblos Indígenas en el seno de la OEA, así como la creación de una Mesa de Trabajo sobre los Derechos de los Pueblos Indígenas, en el marco de la Comunidad Andina de Naciones.

Por su lado, la Comisión Indígena de la Amazonía presidida por el dirigente asháninka Guillermo Naco Rosas promovió en agosto una consultoría internacional y entregó al gobierno un Modelo Institucional para los Pueblos Indígenas del Perú, el mismo que se debatió y desarrolló en un Taller con los dirigentes de las diversas regiones de AIDESEP.

Sin embargo, hubo que esperar hasta diciembre para ver la reacción del gobierno. El día seis se instaló la Comisión Nacional de Pueblos Andinos y Amazónicos (CONAPAA) presidida por Eliane Karp de Toledo. Este organismo, creado por Decreto Supremo 111-2001-PCM, presenta serias deficiencias en su diseño y evidencia que el gobierno no ha asimilado o ha desestimado el diseño institucional presentado por el sector indígena y ha optado por un manejo discrecional y personal del tema en manos de Eliane Karp.

La CONAPAA, integrada por 17 y luego por 21 miembros honorarios, tiene como fin no sólo "promover, coordinar, dirigir, ejecutar" sino además "supervisar y evaluar las políticas, programas y proyectos" que atañen a los pueblos indígenas. Esta concentración de funciones

consultoras y ejecutivas resulta excesiva y entorpece el desarrollo de una institucionalidad sólida y eficiente capaz de elaborar y aplicar políticas multisectoriales de mediano y largo plazo.

Toledo calificó de acto histórico la instalación de ese grupo de trabajo y añadió que los programas propuestos se desarrollarán en concertación con las comunidades andinas y amazónicas. Sin embargo, hasta mediados de abril de 2002, la CONAPAA aún no había realizado formalmente una segunda sesión de trabajo con todos sus miembros y tampoco se ha instalado la Mesa de Diálogo Permanente decretada por el gobierno anterior.

Otros avances de los pueblos indígenas en la concertación

En el mes de octubre de 2001, la Federación Nativa de Madre de Dios (FENAMAD) promovió un modelo de gestión concertada con las asociaciones de pequeños madereros de Tahuamanu y Tambopata y el Estado, sobre la base de acuerdos estratégicos para el desarrollo sostenible del departamento de Madre de Dios. Entre éstos se encuentra el establecimiento y demarcación de bosques de producción permanente a favor de los pequeños extractores forestales, la implementación de un sistema de vigilancia compartida entre el Instituto Nacional de Recursos Naturales (INRENA), la Policía Nacional, las asociaciones de pequeños forestales y la población de la localidad. Asimismo, acelerar el Estudio de Contrastación para la delimitación territorial presentada por FENAMAD a favor de los pueblos indígenas en aislamiento voluntario del departamento.

En el norte de la Amazonía, los representantes de los pueblos shuar, awajun y wampis de Perú y Ecuador realizaron del 30 de octubre al 1 de noviembre su Tercer Encuentro Binacional en la comunidad de Chapiza, Perú. En este evento adoptaron decisiones sobre el desarrollo económico sostenible y la integración comercial, la educación bilingüe y la salud intercultural y crearon el Consejo Técnico Permanente Binacional.

Asimismo, convinieron en solicitar cédulas de identidad o salvoconductos para el libre tránsito de la frontera para que los miembros de los pueblos awajun, shuar y wampi visiten a sus familiares sin obstáculos y promover la participación indígena en todos los proyectos de desarrollo binacional que se ejecuten a su nombre y en sus territorios.

Otro avance importante que conviene destacar es el referido a la participación de la mujer indígena. En el 2001, por primera vez AIDESEP implementó la Secretaría de la Mujer Indígena. Con un presupuesto insuficiente se realizaron talleres en cinco de las seis sedes

regionales, diagnosticando y capacitando en la perspectiva de género. La respuesta y el interés de las mujeres indígenas han sido muy grandes y exigentes y han solicitado la pronta continuación del trabajo iniciado. Además de los talleres, la Secretaría de la Mujer participó en varios eventos nacionales e internacionales representando a la mujer indígena amazónica.

Contaminación minera pone en emergencia a comunidades del país

> *Nosotros nos levantamos a las 4 de la madrugada a pastar nuestros animales y el humo que sale de las chimeneas de la Doe Run está en todas partes. Nos asfixia, nos pica la garganta. Yo vengo a reclamar porque todos nuestros carneros están muriendo y estamos quedando sin animales. Nuestros* cuycitos [2] *también se están muriendo.*
>
> *Antes cuando se enfermaban, los tratábamos con veterinarios y qué bien sanaban y engordaban, ahora no. Desde que la empresa Doe Run bota sus humos con arsénico, con plomo, estamos peor. Hace tres años yo tenía 30 vacas ahora solo tengo una. ¿Con qué vamos a educar a nuestros hijos? ¿Con qué vamos a vivir? Si nosotros vivimos de la carne, de la lana que vendemos. Ahora se cae la lana de nuestros animales, su carne está contaminada con metales... por donde pasteamos van muriendo.*

Este es el lamento de Antonia Segura López, comunera de Huari, y una de las pocas campesinas que logró mostrar sus animales en la Segunda Exposición de Animales Afectados por la Contaminación Minero Metalúrgica realizada el domingo 11 de noviembre en la ciudad de Yauli-La Oroya.

Asimismo, los días 23 y 24, se realizó en Pasco la Segunda Cumbre Internacional de Comunidades y Poblaciones del Perú Afectadas por la Minería, donde más de 600 delegados pidieron al gobierno declarar el estado de emergencia ambiental en el ámbito nacional porque la actividad minera pone en grave riesgo la salud humana pues contamina las tierras de pastoreo, los ríos, lagos y lagunas, daña a los animales y cultivos provocando además el despojo de tierras, empobreciendo a las comunidades vecinas a los asientos mineros.

La Cumbre fue organizada por la Coordinadora Nacional de Comunidades Afectadas por la Minería (CONACAMI) y contó con la participación de delegados de ECUARUNARI (Ecuador) y CONAMAQ (Bolivia). El evento denominado "Godofredo García Baca y mártires de la lucha contra la contaminación medio ambiental" tuvo como lema "Aire, Tierra y Agua limpia" y en el mismo se suscribió la Declaración de Pasco.

586

Hidrocarburos y territorios indígenas: talón de Aquiles del gobierno

Por otra parte, en la región nororiental del país, el Centro de Ecología Holística Otorongo denunció que más de 220.000 habitantes, incluidas las poblaciones de las ciudades de Tarapoto y Lamas y 27 comunidades indígenas tituladas, serán afectados por la exploración petrolera del lote 87 a cargo de Perupetro y la Empresa Advantage Resources, Selva LLC (Burlington), cuya concesión ha sido otorgada sin consulta a las poblaciones afectadas.

El Lote 87 comprende un área de 753.412 has. de las cuales el 70 por ciento son bosques amazónicos primarios. Está localizado dentro de las provincias de San Martín, Lamas, Picota y Moyobamba, pertenecientes al departamento de San Martín; y las provincias de Alto Amazonas y Ucayali, del departamento de Loreto.

El área del lote reúne a tres familias lingüísticas: Familia Quechua del grupo chachapoyas – Lamas; Familia Cahuapana del grupo étnico chayahuita y Familia Jíbaro del grupo étnico aguaruna, con un total de 27 comunidades indígenas tituladas.

Por su parte AIDESEP decidió en diciembre suspender su participación en el diálogo tripartito nacional sobre hidrocarburos mientras el gobierno de Alejandro Toledo y la Comisión de Pueblos Andinos y Amazónicos no garanticen equidad, transparencia y respeto a las organizaciones indígenas.

A pesar de la actitud de la AIDESEP, el 8 de febrero del presente año el Ministerio de Energía y Minas difundió para consulta pública un Proyecto de Reglamento de Consulta para las Actividades Hidrocarburíferas en Tierras de Comunidades Campesinas, Comunidades Nativas y de Poblaciones Indígenas. Este proyecto mutila severamente la propuesta indígena para regular actividades de hidrocarburos en territorios indígenas.

El texto se acompaña de un Informe Explicativo, en el que se presentan los argumentos "legales y prácticos" de la Sociedad Nacional de Minería y Petróleo y Perupetro por medio de los cuales el MEM decidió eliminar el término "pueblos indígenas", entre otros recortes a la propuesta original.

A pesar que AIDESEP, la Defensoría del Pueblo y la Secretaría Técnica de Asuntos Indígenas (STTAI) fundamentaron con solidez los principios del proyecto de AIDESEP, la Dirección General de Hidrocarburos (DGH) mantuvo su posición a favor de las empresas en detrimento de los derechos indígenas.

El Informe Explicativo también informa las razones por las cuales se ha eliminado del Reglamento todo lo concerniente a las compensaciones, indemnizaciones y beneficios económicos que se encontraban en la propuesta inicial de AIDESEP.

587

Violencia y muerte en Los Naranjos, Cajamarca

El 2002 tuvo un inicio trágico. En la madrugada del jueves 17 de enero, un enfrentamiento entre colonos e indígenas aguaruna de la Comunidad Nativa Naranjos, provincia de San Ignacio, departamento de Cajamarca, dejó una secuela de 15 colonos muertos. La prensa nacional destacó en las secciones policiales el hecho de sangre pero no profundizó en las causas que propiciaron este desenlace ni señalaron a los responsables en la esfera pública.

La Defensoría del Pueblo y las comisiones del Congreso de la República y el Poder Ejecutivo luego confirmaron que los colonos habían ilegalmente ocupado tierras tituladas de la comunidad indígena y que las autoridades judiciales y policiales habían desistido de efectuar el desalojo luego de varios intentos frustrados.

Por su parte, el Ministerio de Agricultura decidió recientemente declarar fundado un antiguo reclamo de la Comunidad Naranjos y anular la Resolución Subregional que otorgó en 1997 a nombre del Presidente de la República ciento dieciséis títulos de propiedad sobre sus territorios titulados.

Importantes revelaciones sobre el Proyecto Camisea

El 22 de febrero de 2002 la especialista sobre temas medioambientales, Patricia Caffrey (EE.UU.), presentó las observaciones preliminares del equipo técnico que ha efectuado una Revisión Independiente de los Estudios de Impacto Ambiental del Proyecto Gas de Camisea, en el Valle de Urubamba y la Cordillera de Vilcabamba.

Destacó, en primer lugar, que dicho proyecto no cumple los estándares del Banco Mundial y las prácticas internacionales, pues éstas no permiten la degradación y conversión de bosques primarios tropicales y hábitats amenazados ni el impacto negativo sobre comunidades y pueblos indígenas, incluyendo grupos muy vulnerables en aislamiento voluntario.

No se están respetando los derechos de las comunidades indígenas debido a un período y proceso de consulta deficientes, existe un proceso de "negociación" injusto, propuestas de compensación inadecuadas y es muy probable que las comunidades queden en peores condiciones a consecuencia del Proyecto.

Caffrey recomendó efectuar cambios en los planes de manejo para fortalecer las medidas de mitigación de impactos directos como la contaminación y la erosión. La capa fértil del bosque tropical húmedo del Urubamba es muy delgada y una vez extraída será difícil la reforestación, peor aún si la lluvia arrasa con el suelo fértil. De igual

588

modo sugirió adoptar medidas para obtener el control de acceso y paliar los impactos acumulativos del proyecto.

Avances y retrocesos en la afirmación de los derechos indígenas

En marzo de este año Eliane Karp de Toledo, Presidente de la Comisión Nacional de Pueblos Andinos y Amazónicos, presentó al Congreso de la República una propuesta de reforma constitucional para incorporar en la Carta Magna el reconocimiento a un conjunto de derechos indígenas.

La propuesta, elaborada en una jornada sobre derechos indígenas con el aporte de especialistas y organizaciones indígenas, plantea el reconocimiento de derecho colectivos como el de propiedad sobre los territorios, control sobre los recursos naturales, promoción del desarrollo económico y administración de justicia, entre otros.

Sin embargo, es de lamentar que el Congreso omitió incorporar tales alcances en la versión oficial del anteproyecto de Reforma Constitucional lo que ha causado razonable desconcierto y desazón en la Comisión Nacional que espera que dicho error se rectifique.

Pero un indicador que sigue provocando malestar es la falta de atención a los pueblos indígenas en situación de contacto inicial o en aislamiento voluntario quienes son atropellados por agentes sin escrúpulos, sean madereros ilegales o empresas concesionarias del Gas de Camisea y de otros nuevos lotes que serán puestos en subasta pública en mayo de este año en sus territorios.

Una muestra de los sacrificios a que se ven obligados estos pueblos en extrema situación de vulnerabilidad es el caso de la Comunidad Santa Rosa de Serjali, perteneciente al pueblo yora (nahua) en situación de contacto inicial. Luego de diez meses de una empecinada lucha logró, con el permanente apoyo del Grupo Shinai Serjali y de AIDESEP, que el INRENA les retribuya parte de la madera recuperada y que fue extraída ilegalmente por madereros de Sepahua de la Reserva del Estado a favor de los grupos nómadas nahua kugapakori, ubicados en los bosques del Urubamba, Cuzco.

Debido a la desesperación en la que se hallaban por la depredación de sus recursos, la escasez de animales y los trastornos a su forma de vida provocados por los madereros, el curaca José Dishpopidiwa Waxe y Mario Huidiba, Presidente de la Comunidad, efectuaron arriesgadas y penosas travesías hacia Puerto Maldonado (Madre de Dios) y Lima, para invocar el apoyo de FENAMAD y exponer sus problemas a las autoridades competentes. En una de estas visitas a Lima murió el intérprete, un indígena yaminahua,

589

quién era el único contacto de la comunidad con el mundo exterior pues además del castellano entendía la lengua de los yora.

El pueblo yora (nahua), por su escaso contacto con la comunidad nacional, no posee los recursos culturales para defender sus derechos pues sólo habla su propia lengua y desconoce casi por completo las instituciones y el marco jurídico nacional. En el largo, complejo y, por momentos, desalentador proceso de recuperar su madera ilegalmente extraída, pudieron verificar la parsimonia y hasta la cómplice negligencia del personal del INRENA en el tráfico ilegal de la madera.

Los yora enfrentan ahora las presiones de la Plus Petrol, Hunt Oil y otros que bajo el auspicio del actual gobierno y con el respaldo de grandes corporaciones financieras y de hidrocarburos apuntan sus garras sobre nuevos lotes adyacentes a Camisea. Al parecer, a estos poderosos intereses, que actúan para satisfacer sus propias necesidades de mercado energético, no les importa si la extracción de los recursos no renovables en territorios indígenas puede significar la destrucción de los bosques tropicales y la desgracia y la muerte para los pueblos que los habitan desde tiempos inmemoriales y que sin ellos no pueden sobrevivir.

Notas y Referencias

1 **Arguedas, José María. 1964**. *Todas las Sangres*. Buenos Aires: Editorial Losada, S.A.

2 *Cuy, cuycito*: conejillo de Indias (n.del.e.)

BOLIVIA

La gran debilidad que evidencia el Estado boliviano y la no aplicación de los derechos más elementales de los campesinos e indígenas en lo que tiene que ver con la tierra y los recursos naturales, han sido un foco de tensiones en los últimos años. Conscientes de que las deficiencias tienen profundas causas estructurales que no se resuelven con acuerdos de momento ni con normas fugaces, desde hace algún tiempo las organizaciones representativas comenzaron a demandar reformas de carácter estructural.

590

Movilizaciones campesinas

La marcha campesina "Por la vida y la soberanía", iniciada el 9 de abril de 2001 desde la ciudad de Cochabamba hacia la ciudad de La Paz, además de reclamar la modificación de la legislación agraria para restringir los mercados de tierras, garantizar la entrega exclusiva a campesinos e indígenas de tierras declaradas fiscales y transparentar y agilizar el procedimiento de regularización de derechos agrarios (saneamiento agrario), pedía la restitución al patrimonio nacional de los sectores estratégicos de la economía (hidrocarburos, telecomunicaciones, energía, transportes), enajenados en el proceso de "capitalización" a partir de los últimos años de la década de los 80. Ante la necesidad de emprender transformaciones estructurales del Estado y la sociedad boliviana, afectados por una crisis generalizada, proponía la convocatoria a una Asamblea Constituyente Popular para concertar modificaciones a la Constitución Política del Estado.

El peso de la marcha de abril lo llevó la Coordinadora de Defensa del Agua –que agrupa a sectores involucrados directamente con la defensa de los recursos hídricos y que surgió en abril del año 2.000 en el contexto de la "guerra del agua" (véase *El Mundo Indígena 2000-2001*)- y los campesinos productores de coca del trópico cochabambino. Se esperaba que la marcha fuera reforzada con la incorporación de sectores urbanos y rurales, sin embargo, esto no sucedió. La marcha fue intervenida 12 veces por el Ejército y, en medio del silencio de la prensa, logró arribar a la ciudad de La Paz en fecha 23 de abril, cuando ya se encontraba aislada, por lo que sus demandas no fueron atendidas por las autoridades de gobierno, dejando su tratamiento a comisiones de trabajo que se diluyeron en el tiempo sin ningún resultado positivo.

En el mes de julio, el sector campesino que concentra la población aymara del altiplano, efectuó un bloqueo de caminos en la ciudad de La Paz, con gran impacto nacional. A diferencia de la movilización anterior, sus demandas se restringían a pedir el cumplimiento de compromisos asumidos por el gobierno con este sector, entre los que se destacaba la concesión de 10.000 tractores a favor de pequeños productores agropecuarios y el otorgamiento de créditos por un monto de 8 millones de dólares. Esta nueva movilización fue también víctima de la represión militar y el aislamiento político y no alcanzó resultados concretos.

Ambos acontecimientos confirmaron la capacidad de movilización que mantienen los campesinos cocaleros del trópico cochabambino y los indígenas aymaras en el Departamento de La Paz. Pero en contraste con esta capacidad, desnudaron también la insuficiente articulación de los sectores sociales y la escasa disposición estatal para atender las reivindicaciones sociales.

591

La lucha contra la pobreza frente a las demandas indígenas y campesinas

Hacia afuera, el gobierno boliviano hacía propaganda de su estrategia de reducción de la pobreza, producto de un supuesto proceso de concertación nacional, denominado "diálogo social", realizado con representantes de los Concejos Municipales y de los Comités de Vigilancia.

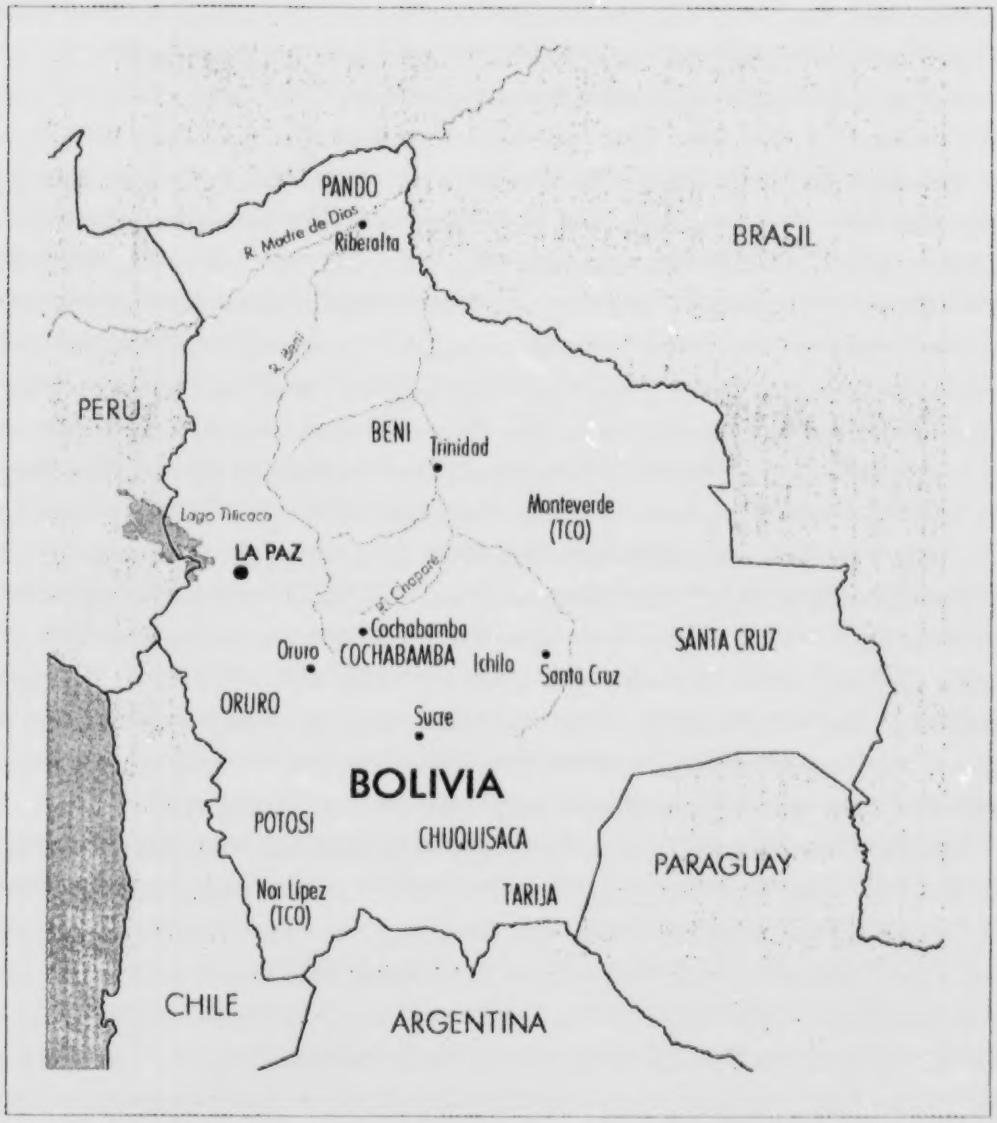
La estrategia emergente de este "diálogo" se concentró en reforzar el presupuesto de los gobiernos municipales, especialmente de los municipios más pobres del país, con los recursos equivalentes a la condonación de la deuda externa acordada con algunos países y organismos multilaterales, para ser invertidos en programas sociales en un lapso de 15 años. Los recursos (1.600 millones de dólares equivalentes al 40% del monto total asignado por el Tesoro Nacional a los municipios) aunque importantes, resultan insuficientes para revertir la situación de pobreza del país más pobre del continente después de Honduras. De acuerdo con el índice de Necesidades Básicas Insatisfechas (NBI) de Naciones Unidas, el 59% de la población se encuentra en situación de pobreza y el 24% en situación de pobreza extrema. En el área rural, donde todavía se concentra más del 50% de la población total del país, principalmente pueblos indígenas y originarios, los índices de pobreza superan el 90% y la pobreza extrema el 60%.

La lucha por la tierra y el territorio en tierras bajas y tierras altas

En este contexto, la temática indígena quedó relegada a un segundo plano y no formó parte efectiva de la agenda oficial. Sin embargo, la lucha por la tierra y el territorio, desde el segundo semestre del año 2001, se concentró en las tierras bajas. Las tensiones y conflictos aumentaron debido a que el proceso de regularización de derechos agrarios, a través del proceso de saneamiento encargado por Ley al Instituto Nacional de Reforma Agraria (INRA), además de dilatorio, burocrático y complejo, adolece de innumerables irregularidades en su aplicación, lo que redunda en estériles resultados en cuanto al acceso de indígenas y campesinos a la tierra y al territorio.

La lentitud del saneamiento agrario se expresa en que de las 103 millones de has. de tierras rurales que deben ser saneadas en el plazo de 10 años a partir del 18 de octubre de 1996, fecha de la promulgación de la Ley Agraria, y ya habiendo transcurrido más de la mitad de este plazo, apenas se ha concluido con el proceso de 10 millones de hectáreas, de las cuales la titulación de tierras y territorios a favor de indígenas y campesinos ha sido mínima.

592



Los pueblos indígenas de tierras bajas han demandado la titulación de 52 territorios con una superficie total de 24,4 millones de hectáreas, pero hasta abril del 2002, sólo han consolidado 2,05 millones de hectáreas, es decir menos del 10% de lo pretendido. Los pueblos indígenas de tierras altas, por su parte, han presentado 39 demandas territoriales por una superficie de 9 millones de hectáreas, de las cuales sólo han logrado titular 12.000 hectáreas correspondientes al ayllu sicoya ubicado en el Departamento de Potosí.

Si bien los pueblos indígenas de tierras altas se han insertado al proceso agrario con posterioridad a los de tierras bajas, su primera demanda (Nor Lípez en el Departamento de Potosí) data del año 98, el proceso para su titulación no implica mayores conflictos con par-

BEST COPY AVAILABLE

593

ticulares, pues son pocas las personas asentadas en los territorios objeto de sus demandas, o se trata de los mismos pobladores originarios que optan por la titulación individual. Por otra parte, existe abundante información acerca de los ayllus de occidente y su ubicación, por lo que no se justifican mayores estudios técnicos. Los problemas mayores se refieren más bien a conflictos de límites con la jurisdicción de las secciones municipales, pues la lógica de ocupación espacial de los pueblos indígenas es distinta a la división político-administrativa del país.

En definitiva, la atención de estas demandas podría ser mucho más expedita y menos costosa, ya que sería suficiente precisar la ubicación geográfica de la demanda territorial y proceder luego a su delimitación y titulación, sin agotar el engorroso procedimiento que se aplica en tierras bajas.

Lo que no puede ser resuelto a través del procedimiento de saneamiento y titulación es la calidad de tierras de los pueblos indígenas de tierras altas, pues en la mayoría de los casos se trata de tierras altamente erosionadas e improductivas. De acuerdo a estudios técnicos realizados por la Superintendencia Agraria, más del 80% del total de tierras degradadas en el país (22,8 millones de has.) se encuentran en tierras altas, gran parte de ellas precisamente en las áreas demandadas como territorios indígenas por los pueblos originarios del oeste boliviano, lo que implica la disposición, en los hechos, de superficies mínimas para el trabajo agropecuario. Los niveles de degradación tienen que ver con la actividad minera, predominante en la región durante los dos últimos siglos, y con la excesiva parcelación de la propiedad indígena que se hizo durante la Reforma Agraria que ha implicado la sobre-explotación y saturación de las tierras.

El proceso agrario en Bolivia está al borde del agotamiento

El actual proceso agrario boliviano va perdiendo legitimidad y se encuentra al borde de su agotamiento. Lo que representó una gran expectativa nacional y un profundo compromiso internacional, parece haberse desinflado ante las acciones del Estado para reconocer los derechos territoriales indígenas.

Prueba de lo anterior es que los 8 territorios indígenas, de 2,8 millones de hectáreas, reconocidos por decreto supremo entre 1990 y 1992 en virtud de los compromisos asumidos con la "Marcha por el Territorio y la Dignidad" de los pueblos indígenas del departamento del Beni (Amazonía sur del país), sufren todavía cientos de ganaderos, madereros, mineros y petroleros que controlan las tierras y los recursos naturales existentes en su territorio. Los decretos gubernamentales de aquel enton-

594

Curso de información sobre regularización de la tierra en una comunidad de Sirionó.
Foto: CIDDEBENI

ces sólo fueron declarativos y demagógicos, y los derechos territoriales indígenas, provisionales e incipientes.

La situación en los otros territorios reclamados por los indígenas no es diferente. Los grupos de poder no están dispuestos a "ceder" el reconocimiento a los indígenas de sus derechos territoriales, en tanto que el Estado, controlado en sus instancias estratégicas por estos mismos grupos, no está dispuesto a enfrentarse a ellos, ni siquiera en la lógica de liquidar el latifundio y la improductividad e impulsar la modernización del agro en concordancia con las exigencias del propio modelo de libre mercado en vigencia, y menos aún para defender los derechos indígenas.

El movimiento de los "sin tierra"

El fracaso actual del nuevo proceso agrario, se ha traducido en la emergencia del movimiento de los "sin tierra", integrado por campesinos, indígenas y migrantes desplazados del aparato productivo y carentes de tierras y oportunidades para sobrevivir en condiciones de dignidad humana.

Las autoridades estatales dicen no explicarse cómo pueden existir los "sin tierra" en Bolivia, que con una extensión superficial de 109 millones de hectáreas y con una población de sólo 8 millones de habitantes, en promedio cada boliviano debería poseer 13 hectáreas.

595

Sin embargo, existen campesinos e indígenas que no acceden a un mínimo pedazo de tierra, y el Estado lo sabe, porque las tierras están excesivamente concentradas. Los empresarios, medianos y grandes, acaparan 8 veces más tierras que los indígenas y campesinos, pese a que representan sólo el 1% de las unidades agropecuarias. Pero los medianos y grandes propietarios, no sólo han concentrado las tierras. También han concentrado los créditos agropecuarios y sus posteriores condonaciones, los subsidios y todas las demás ventajas, sin generar productividad, empleo, desarrollo y bienestar. Por el contrario, una buena parte de ellos se ha dedicado a fomentar el capital especulativo, el tráfico de tierras y la explotación de indígenas a través del trabajo de servidumbre.

Transformar esta estructura de latifundios y de sistemas explotativos, es un objetivo implícito del proceso agrario, que debería sancionar la ilegalidad, revertir predios abandonados y permitir el acceso a la tierra a quienes carecen de ella o la poseen en forma insuficiente. Pero nada de esto se ha cumplido. Es parte de la estrategia de los grupos de poder impedir el acceso a la tierra a campesinos e indígenas y para ello, no sólo acuden a los medios legales que el mismo procedimiento prevé para dilatar y burocratizar el proceso, y a los Tribunales de Justicia que también los representan y resuelven a su favor, sino que también desarrollan acciones de violencia contra los indígenas y las instituciones que los apoyan.

La violencia como recurso para impedir la titulación de tierras indígenas

Las manifestaciones de violencia a causa de los pocos avances del proceso de saneamiento de tierras indígenas se iniciaron en el mes de agosto de 2001, cuando los indígenas demandantes del territorio chiquitano de Monte Verde, denunciaron públicamente la arremetida de personas ilegales en su territorio que, en menos de quince días, desmontaron más de 400 hectáreas de bosque. Las comunidades retomaron los puestos de control de acceso a su territorio que ya habían implementado en 1998 para impedir la invasión de su territorio, y la Superintendencia Forestal inició inspecciones para sancionar a los responsables de los desmontes ilegales. La comisión de la Superintendencia fue interceptada por los supuestos propietarios y amenazada con armas de fuego si no se retiraba de la zona, y las comunidades en los puestos de control fueron amedrentadas igualmente. Las agresiones llegaron a su límite el 15 de septiembre en el municipio de San Javier, Departamento de Santa Cruz, cuando un grupo de ganaderos y personas armadas secuestró y agredió brutalmente al abogado del Cen-

596

tro de Estudios Jurídicos e Investigación Social (CEJIS), asesor legal de la Coordinadora de Pueblos Étnicos de Santa Cruz y, en tal calidad, responsable del acompañamiento jurídico a la demanda de titulación del territorio indígena chiquitano de Monte Verde.

El origen de las agresiones estaba en la defensa cerrada que han hecho las comunidades indígenas para evitar que fueran consolidados varios fraudes verificados en la obtención de títulos por parte de personas particulares en el interior de su territorio, en base a una sentencia del Tribunal Constitucional que deliberadamente intentó quitarle la competencia al INRA para declarar la invalidez de los documentos fraudulentos.

El nuevo Gobierno,. que ya había desatado con gran impacto acciones represivas contra los campesinos cultivadores de coca en el trópico cochabambino optó, en el caso de los conflictos de tierras en el oriente, por satisfacer las exigencias de los gremios del sector agropecuario.

El 27 de septiembre el Gobierno suscribe un Convenio con la Cámara Agropecuaria del Oriente y el Comité Cívico Pro Santa Cruz, en el que compromete la palabra del Poder Ejecutivo de otorgar plena seguridad jurídica a las propiedades de "empresarios", aunque éstas se encuentren en áreas protegidas, hubieran sido otorgadas ilegalmente en áreas de colonización o durante el régimen de facto del Gral. Luis García Meza (ahora recluido en un penal de máxima seguridad por narcotráfico, crímenes de lesa humanidad y tráfico de tierras, entre otros delitos) período de los peores casos de corrupción en la distribución de la propiedad agraria en el oriente boliviano. Al mismo tiempo, se prometía el uso de la fuerza pública contra campesinos ocupantes de áreas de reserva y en caso de intervención de aquellas instituciones que apoyan a indígenas y campesinos.

Algunos días después, el Poder Ejecutivo suscribió un Acta de Preacuerdos con los barraqueros (productores de goma y castaña) del Norte Amazónico, en la perspectiva de consolidar la estructura latifundista de la región a favor de 300 afiliados a la Asociación de Productores de Goma y Almendra (ASPROGOAL) y en desmedro de 70.000 indígenas y campesinos de la región.

Fue entonces cuando bajo el auspicio de Comités Cívicos que ofrecían defender por la fuerza las tierras del Departamento contra los campesinos sin tierra, la violencia se extendió a otras áreas de tierras bajas. Hubo despliegue de grupos paramilitares organizados por sectores ganaderos y grandes propietarios y empezaron a atacar tierras campesinas en la Provincia Ichilo, supuestamente ubicadas en un área de reserva forestal. En realidad los campesinos están asentados fuera del área de Reserva y su tierra titulada había sido usurpada por una propietaria particular. La reserva está controlada por cuatro terratenientes (entre ellos el Ministro de Justicia de ese enton-

597

ces), seis empresas madereras y tres empresas petroleras. Los ataques continuaron luego en Canandoa, población ubicada a 35 Km de la ciudad de Santa Cruz, donde treinta personas armadas atacaron a los campesinos, incendiaron sus casas, quemaron a un niño y los desalojaron del lugar a fin de dejar el sitio expedito para que opere una empresa agropecuaria soyera.

Lo más grave, sin embargo, se produjo en la madrugada del 9 de noviembre en el fundo denominado Pananty, ubicado en la Provincia Gran Chaco, Departamento de Tarija, a 6 Km de la ciudad de Yacuiba. El país despertó ese día con la grave noticia de que 40 sicarios armados provocaron una masacre de campesinos del Movimiento Sin Tierra. Seis campesinos fueron acribillados a bala, otros 23 heridos, algunos de gravedad, y uno de ellos murió dos días después en el Hospital de Yacuiba. La "masacre de Pananty" fue el detonante que hizo volver a la realidad, dejando al descubierto que el proceso agrario boliviano había sido una ficción.

Los hechos de violencia se extendieron luego a la Amazonía Sur del país. El 29 de noviembre fueron secuestrados los principales dirigentes indígenas del pueblo de Baures por lugareños al servicio de ganaderos, obligándoles a firmar su renuncia a más de la mitad de su demanda territorial. Como no podía ser de otra manera, un día después el INRA dictaba una resolución por la cual eliminaba de la demanda indígena el área de la renuncia obtenida bajo coacción.

Cambio de gobierno y la lucha contra el narcotráfico como cortina de humo

Durante el segundo semestre de 2001 se produjo el cambio de gobierno. Ante una enfermedad irreversible que afectaba al ex Presidente Hugo Banzer, lo sustituyó en el mando el Vicepresidente Jorge Quiroga, quien al mismo tiempo cambió a más de la mitad del gabinete ministerial. Se esperaba que los nuevos gestores del aparato estatal agotarían esfuerzos para concertar con los sectores sociales soluciones integrales frente a la profunda crisis económica y social que afectaba al país. Pero la frustración fue grande al comprobar que el nuevo gobierno optó más bien por aplicar una política represiva para conjurar las demandas sociales, siendo las mayores víctimas los campesinos productores de coca del trópico cochabambino.

El denominado "Plan Dignidad", supuestamente dirigido a controlar el narcotráfico, tiene como componente central la erradicación de cultivos de coca. En un primer momento se hablaba de la erradicación de excedentes del consumo tradicional nacional, pero luego se sustituyó por la estrategia de "coca cero", es decir la erradicación

total de la coca existente en el trópico cochabambino, dejando para el consumo nacional sólo la coca de los yungas, en el Departamento de La Paz. Otro componente del Plan Dignidad se refiere al denominado desarrollo alternativo, consistente en el incentivo para la substitución de la coca con cultivos alternativos, como cítricos, chinchilla, cuero y otros.

Los recursos destinados por el Estado para esta finalidad (80 millones de dólares) resultaron absolutamente insuficientes para las 40.000 familias campesinas que viven en la región, en su mayoría integradas por migrantes de las regiones mineras que a raíz de la crisis del estaño de mediados de la década de los 80, implementaron nuevas estrategias de sobrevivencia. Las organizaciones de los cocaleros argumentan por su parte que tales recursos no llegaron efectivamente, y la inviabilidad económica de la sustitución de cultivos derivada de la diferencia de valores de cambio en el mercado, con la misma demanda y manteniendo los mismos niveles de productividad, hizo fracasar una y otra vez la estrategia del gobierno.

Pero el componente privilegiado del Plan Dignidad ha sido el aparato represivo, con importantes cantidades de dinero destinadas al ejército y a la creación y fortalecimiento de los cuarteles militares en la zona, lo que hizo que los cocaleros se movilizaran. Paralelamente, se activaron fuerzas irregulares de paramilitares, tal como lo comprobó y denunció la Defensora del Pueblo en el mes de diciembre de 2001. Las explicaciones de las autoridades castrenses fueron por demás sorprendentes: en situaciones en las que el ejército no da abasto se debe recurrir a "reservistas". Y es aún más sorprendente argumentar esta necesidad tomando en cuenta que en los últimos dos meses de 2001 se desplazaron 14.000 efectivos a la zona cocalera del trópico cochabambino (localidad del Chapare), que equivalen al 75% de las tropas militares de todo el país. Lo que no es sorprendente en este escenario es el saldo de los operativos militares con más de 10 campesinos muertos, y muchos más heridos y torturados. En los últimos años se cuentan ya 57 campesinos cocaleros muertos por la represión militar en la región.

La Cumbre por la Tierra, un intento del Gobierno para distender los conflictos

En medio del descreimiento, los conflictos y la violencia, e instado por la Iglesia Católica, el gobierno decidió convocar a una Cumbre por la Tierra, en la que todos los sectores sociales concertarían las soluciones frente a la problemática de la tierra y el territorio. Algunas orga-

599

nizaciones indígenas y campesinas representativas como la Coordinadora de Pueblos Étnicos de Santa Cruz (CPESC), la Confederación Nacional de Ayllus y Markas de Quillasuyo (CONAMAQ) y el Movimiento de los Sin Tierra (MST), exigieron al Gobierno que diera señales claras de su voluntad política para encontrar soluciones integrales, y anulara el Convenio suscrito con la Cámara Agropecuaria en el mes de septiembre de 2001. Aunque en los hechos y ante las varias denuncias sobre los alcances del Convenio, el gobierno no se animó a darle cumplimiento, tampoco lo dejó sin efecto.

La anunciada Cumbre por la Tierra, finalmente denominada "Encuentro por la Tierra" se realizó el 29 de noviembre de 2001. Al Encuentro asistieron las organizaciones indígenas de tierras altas y tierras bajas, el Movimiento de los Sin Tierra y gran parte de las Federaciones departamentales campesinas. Por el lado de los empresarios, asistieron la Cámara Agropecuaria del Oriente, la recién conformada Confederación de Ganaderos de Bolivia y sus federaciones y asociaciones departamentales y regionales, y la Cámara Forestal. Por el Estado participaron los ministros de Desarrollo Sostenible, Agricultura, Asuntos Campesinos e Indígenas y Justicia, los Superintendentes Agrario y Forestal, el Director Nacional y los Directores Departamentales del INRA; los presidentes de las Cámaras de Diputados y Senadores, y los miembros del Tribunal Agrario Nacional. Además participaron representantes de la Iglesia, instituciones involucradas en la problemática de tierras y la cooperación internacional.

Los diferentes sectores presentaron sus visiones sobre la problemática y, sin que hubiera habido espacio para el debate, fue clausurado por el Presidente de la República. Las ponencias presentadas no fueron resumidas ni sistematizadas y más adelante el Gobierno propuso darle continuidad al encuentro en eventos regionales.

A pesar del encuentro, las acciones en contra de los campesinos continuaron. Por los casos de violencia que se habían presentado contra éstos, fueron detenidos dirigentes campesinos en las zonas de conflicto y los sobrevivientes de la masacre de Pananty. El 31 de diciembre, la Dirección Nacional del INRA emitió una Resolución Administrativa que modifica la norma técnica aplicable en los procesos de saneamiento agrario, flexibilizando los requisitos para los predios de empresarios agrícolas y ganaderos, y las medianas propiedades improductivas.

Esto puso en evidencia que no sólo no existía voluntad alguna para darle solución concertada a los conflictos, sino además que el Encuentro por la Tierra era un simple mecanismo para distraer la atención y favorecer la aplicación de las medidas prometidas a los agropecuarios. Los sectores indígenas y campesinos condicionaron su asistencia a los en-

600

cuentros regionales a que previamente se frenaran las acciones promovidas de hecho por empresarios a través de mercenarios y se liberara a los dirigentes campesinos encarcelados ilegalmente.

Después de muchas postergaciones, a fines de febrero de 2002 el gobierno reinstaló el Encuentro, pero los sectores sociales no asistieron, con lo que quedó enterrada la iniciativa gubernamental sin haber resuelto ni uno sólo de los varios conflictos que la motivaron.

Reformas a la Constitución Política del Estado

La crisis en el país, que se había desatado mucho antes del cambio de gobierno, y que pasaba además de la crisis económica y social, por una profunda crisis institucional y de confrontación entre los partidos de la coalición de Gobierno y los partidos de oposición, motivó la intervención de la Iglesia Católica, en búsqueda de un consenso político partidario. En junio de 2001 se suscribió el Acta de Entendimiento, por la que los partidos políticos asumieron compromisos para superar la crisis. Además de la recomposición de la Corte Electoral, se acordó la aprobación de una Reforma a la Constitución Política del Estado tendiente a la ampliación de derechos civiles y políticos, con el fin de canalizar la protesta social. El recién instalado Gobierno formó una comisión de "notables", – el Consejo Ciudadano - con el mandato de formular las propuestas de reforma recogiendo los aportes de los diferentes sectores a través de la realización de talleres departamentales y sectoriales.

Por su parte, con el apoyo de instituciones privadas que trabajan con los sectores rurales, las organizaciones habían emprendido un proceso de análisis y concertación interna de propuestas para la reforma constitucional, cuyo debate se había iniciado antes del cambio presidencial con la presentación formal de un proyecto por el ex – Presidente Banzer.

Este proceso culminó su primera fase con un encuentro nacional en la localidad de Vinto, Cochabamba, en el mes de agosto de 2001. Sobre el proyecto de reforma constitucional, las organizaciones denunciaron que se trataba de un acuerdo entre líderes de partidos políticos "manchados por la corrupción y la falta de credibilidad", que las reformas propuestas buscaban consolidar el modelo neoliberal y que no estarían nunca de acuerdo con ellas aunque les ofrecieran "algunos caramelos como la eliminación del monopolio de los partidos políticos". Manifestaron que los pueblos y naciones originarias tenían sus propias propuestas para garantizar sus derechos territoriales y para proteger su producción de alimentos,

601

exigiendo que los recursos naturales dejen de ser concesionados y que la tierra sea para quienes la trabajan y no para los latifundistas que la acaparan. Denunciaron que la consulta del Consejo Ciudadano estaba siendo utilizada para encubrir el hecho real de que las modificaciones a la Carta Magna la harían los jefes de unos cuantos partidos políticos y que en su lugar las reformas debían surgir de una reunión amplia en una Asamblea Constituyente.

La propuesta presentada por el Consejo Ciudadano

La propuesta de reforma del Consejo Ciudadano fue entregada formalmente al Presidente de la República el pasado mes de noviembre, momentos en que el gobierno se encontraba en apuros para realizar la Cumbre por la Tierra y los sectores sociales se veían acosados por las persecuciones judiciales y la violencia.

Recién los primeros meses de este año, los sectores indígenas y campesinos pudieron conocer las propuestas del Consejo Ciudadano. La crítica generalizada que se ha hecho de la propuesta tiene que ver con que a pesar de incorporar algunos mecanismos de participación y derechos sociales, tiene un carácter marcadamente neoliberal, permitiendo amplias garantías a la inversión extranjera que van en contra de intereses nacionales y afectan gravemente la posibilidad de indígenas y campesinos de acceder a la propiedad territorial y agraria:

En el *Régimen Agrario* propone sustituir el "dominio originario de la **nación**" sobre las tierras agrarias por el "dominio originario del **estado**" y eliminar la facultad estatal de distribución, reagrupamiento y redistribución de la propiedad agraria. Paralelamente, se eliminaría el principio fundamental de que "la tierra es de quien la trabaja", el derecho de los campesinos a la dotación de tierras y el requisito del cumplimiento de la función económica social de las propiedades medianas y grandes.

Estas modificaciones implicarían el fin de la Reforma Agraria, pues el Estado no intervendría más para garantizar las tierras a indígenas y campesinos, y permitirían consolidar la actual estructura concentrada de tierras y el latifundio improductivo. En los procesos de saneamiento, los particulares que pretenden propiedades en el interior de tierras indígenas, fueran estas legales o ilegales, automáticamente consolidarían a su favor las tierras pretendidas, dejando para los indígenas sólo las tierras más pobres y alejadas. En síntesis, la distribución de la tierra quedaría

sometida en un primer momento a la ley del más fuerte y, en un segundo momento, exclusivamente a las leyes del mercado.

Acorde con las exigencias del modelo de desarrollo, se propone eliminar el carácter indivisible e inembargable del solar campesino y la pequeña propiedad, y la obligación del Estado de conceder créditos de fomento a los campesinos, con lo que éstos quedarían obligados a recurrir a la banca comercial y embargar en garantía de los mismos su propiedad. Tomando en cuenta que las condiciones del mercado de productos agropecuarios son muy difíciles para los pequeños productores gracias a la libre importación, se puede fácilmente prever que en poco tiempo, los campesinos perderían sus tierras al no poder producir con alta rentabilidad o no poder pagar los créditos adquiridos para tal fin.

Finalmente, el Consejo Ciudadano propone eliminar la función del Estado de promover planes de colonización para una mejor distribución de la tierra y los recursos naturales y, en su lugar, sólo asumir la responsabilidad de una distribución racional de la población. Esto afectaría gravemente a los indígenas y campesinos de tierras altas, donde la tierra es escasa y está altamente degradada, pues no podrían aspirar a tierras de colonización en las tierras bajas.

En materia de *Recursos Naturales,* propone elevar a rango constitucional a las Superintendencias como entes autárquicos para la regulación, control y supervisión de la explotación de la tierra, bosques y agua, y de todos los recursos naturales. Tanto indígenas como campesinos, de manera reiterada han elevado la voz de protesta contra el sistema de las Superintendencias, porque actúan como soberanas y sin estar sujetas a ningún control, para disponer de los recursos naturales del país. Los límites que establece la ley son constantemente rebasados por las resoluciones de las Superintendencias y, salvo el aparato judicial que no funciona en beneficio de los derechos de las comunidades, no existe ningún órgano público con poder de control sobre estas instituciones.

Paralelamente a la constitucionalización de las superintendencias, se eliminarían los límites del Estado para disponer de los recursos naturales renovables y no renovables, la inviolabilidad de los bienes que constituyen patrimonio nacional y la obligación de protegerlos y preservarlos, así como la prohibición de transferir o adjudicar en propiedad las minas y los yacimientos de hidrocarburos. Con estas modificaciones, el Estado, a través de las Superintendencias podría disponer libremente de todas las riquezas nacionales para su adjudicación a empresas nacionales

o extranjeras, siendo estas regulaciones las que más gravemente afectarían a los pueblos indígenas y originarios, dado que sus territorios, aún sin regularizar sus derechos propietarios, son los que en su mayoría albergan las riquezas.

En materia de *Derechos Sociales y Políticos*, uno de los objetivos que justificaron el impulso a una reforma constitucional, las modificaciones propuestas por el Consejo Ciudadano, no son precisamente garantía del cumplimiento de tales objetivos. Pese a introducir instituciones de democracia semi-directa, como la iniciativa legislativa, el referéndum y el plebiscito, la decisión de éstos queda sujeta, sin embargo, a una mayoría parlamentaria y a la voluntad del Poder Ejecutivo. De la iniciativa ciudadana para cambios legislativos y de la consulta se excluyen las reformas a la Constitución Política del Estado. En el régimen de partidos políticos deja sin modificar el monopolio de los partidos en el ámbito nacional, que es donde se controlan los recursos y políticas económicas.

En lo que respecta a los derechos ciudadanos, se establece que la igualdad jurídica de todos los habitantes supone el deber estatal de adoptar medidas de acción positiva para eliminar las desigualdades, pero no establece medidas específicas en favor de los sectores sociales tradicionalmente marginados del desarrollo.

A la par con los derechos de asociación, tránsito y propiedad privada, la propuesta de reforma se traduce en la penalización de la protesta social, la intervención de las organizaciones que la realizan, la resolución de conflictos de tierra a favor de supuestos propietarios sobre tierras que reclaman indígenas y campesinos, y la penalización de acciones de hecho para su recuperación.

Reacción de indígenas y campesinos: La Marcha por la Soberanía Popular, el Territorio y los Recursos Naturales

Luego del fracaso del Encuentro por la Tierra, las organizaciones indígenas y campesinas concentraron sus esfuerzos en los temas de la reforma constitucional. Mesas de concertación realizadas por las organizaciones indígenas y campesinas de tierras altas y tierras bajas en los meses de enero, febrero y marzo impugnaron abiertamente las propuestas del Consejo Ciudadano y exigen que para las reformas a la Constitución se convoque a una Asamblea Constituyente en la que tengan participación los sectores sociales sin la mediación de los partidos políticos.

Ante tan cerrada oposición a la propuesta del Consejo Ciudadano, los partidos políticos con mayor representación en el Parla-

604

mento trabajaron para la generación de consensos sobre la reforma constitucional, instados por el Presidente de la República a aprobar la Ley antes de las elecciones generales que se realizarán el 30 de junio de 2002. La última semana de abril se anunció que había consenso en cuanto a la reforma, aunque no se conocía su contenido. Durante esos mismos días la Cámara de Diputados aprobó un proyecto de Ley de Desarrollo Sostenible que puso en alerta a las organizaciones indígenas y campesinas y sectores ambientalistas, ya que beneficia exclusivamente a las concesiones forestales con una reducción del 50 % de la patente. También se tuvo conocimiento que el gobierno estaría próximo a emitir un Decreto Supremo para modificar el actual reglamento de la Ley INRA, introduciendo cuestionadas normas para favorecer la consolidación de propiedades improductivas e ilegales, y que el INRA aprobaría una "norma técnica", aumentando la extensión de tierras por cabeza de ganado para la consolidación en el saneamiento de propiedades ganaderas.

Estas noticias no sólo desataron fuertes denuncias de indígenas, campesinos y ambientalistas. El rechazo a la reforma constitucional de consenso de los partidos y la exigencia de una "Asamblea Constituyente con participación de todos los sectores sociales sin la mediación de los partidos políticos", el archivo definitivo del Proyecto de Ley de Desarrollo Sostenible y la no aprobación de las normas previstas por el Gobierno y por el INRA, que han denominado "paquete agrario", junto con la aprobación de otras medidas para la vigencia plena de sus derechos a la tierra, el territorio y los recursos naturales, son la consigna de la Marcha por la Soberanía Popular, El Territorio y los Recursos Naturales, que el 13 de mayo emprendieron en Santa Cruz indígenas, campesinos, colonizadores y campesinos sin tierra. A casi tres semanas de iniciada esta nueva marcha, y en medio de un agitado debate electoral, múltiples sectores sociales de todo el país se han sumado a la reclamación de una Asamblea Constituyente.

BRASIL

Brasil está habitado por 216 pueblos indígenas reconocidos oficialmente, con una población de aproximadamente 350.000 personas, que hablan 180 lenguas. Existen pruebas de la existencia de 42 pueblos en aislamiento voluntario que viven sin contactos regulares con el resto de la sociedad. Los indígenas representan apenas el 0,2% de la población brasileña, pero tienen un papel importante en el escenario político del país.

Se encuentran demarcadas 420 tierras indígenas, con 87.000.000 de hectáreas, lo que representa el 11,55% de todo el territorio nacional. Otras 130 tierras están en proceso de demarcación, que corresponden a 17.508.334 hectáreas. La mayor parte de las tierras indígenas están ubicadas en la Amazonía, y ocupan el 20% del área de esa región.

VII Asamblea General de COIAB

La VII Asamblea General de COIAB (Coordinación de las Organizaciones Indígenas de la Amazonía Brasileña) fue realizada los días 28 a 31 de mayo de 2001, en Santarém, estado de Pará. En la Asamblea participaron 147 delegados indígenas, representantes de 50 pueblos y 38 organizaciones regionales de los nueve estados de la Amazonía.

Durante la VII Asamblea General se evaluaron los avances del movimiento indígena de la Amazonía brasileña, especialmente en los aspectos de la salud, educación, tierra y alternativas económicas, fueron definidas las metas y acciones para los próximos años y fue electa una nueva Coordinación Ejecutiva para el Período 2001[1].

La Asamblea General decidió que la actuación de COIAB para los próximos tres años debe dar prioridad, entre otras cosas a:

- *La organización interna, la administración y la gerencia de recursos;*
- *La articulación con las organizaciones de base;*
- *La demarcación de los territorios indígenas;*
- *La implementación de la salud y educación escolar indígena diferenciada;*
- *El apoyo a los derechos indígenas a nivel nacional e internacional, incluyendo el Estatuto de los Pueblos Indígenas;*

La VII Asamblea General de COIAB también decidió la creación del Centro de Producción y Cultura de los Pueblos Indígenas de la Ama-

606

zonía con la finalidad de "mejorar las condiciones de vida de los pueblos indígenas de la Amazonía brasileña y la protección de su patrimonio natural, divulgando sus alternativas socioeconómicas y culturales a la sociedad en general". También se decidió la creación de un departamento de mujeres, que junto con las organizaciones de mujeres indígenas ya constituidas, estimulará la promoción de los derechos e intereses de las mujeres y apoyará su articulación a nivel regional, para realizar luego intervenciones a nivel nacional e internacional.

La VII Asamblea General decidió también la instalación de una representación de COIAB en Brasilia, la capital federal, considerando que esta ciudad es el centro del poder político del país, donde se toman las decisiones que repercuten directamente en la vida de las comunidades indígenas.

BEST COPY AVAILABLE

La oficina de la Representación fue instalada en octubre de 2001, y tiene en su equipo dos líderes, un abogado, un asesor de comunicación y una secretaria.

Actuación de COIAB en el sector de la salud

Las políticas públicas de atención de la salud indígena fueron reformuladas a partir de 1999. Uno de los primeros cambios fue una decisión de pasar al Ministerio de Salud, a través de la Fundación Nacional de la Salud-FUNASA, la responsabilidad de administrar y ejecutar los programas relacionados con la salud de los pueblos indígenas.

Se crearon 34 Distritos Sanitarios Especiales Indígenas – DSEIS, con el objetivo de definir programas de acuerdo con la realidad de los pueblos indígenas. Para la creación de cada distrito se observaron las características culturales, sociales y lingüísticas y también la distribución geográfica de los pueblos indígenas.

El gobierno federal amplió el presupuesto específico destinado anualmente para la salud indígena. Antes de 1999, el valor máximo de esa erogación era de R$ 26.000.000,00 (aproximadamente 10.400.000 US$) y en 2001 fue de R$ 100.000.000,00 (40 millones de US$), además de recursos de otros programas destinados a la salud en general, como por ejemplo salubridad básica.

La COIAB, sus organizaciones de base y organizaciones no-gubernamentales firmaron convenios con FUNASA, a través de los cuales obtuvieron recursos financieros para prestar atención primaria a las comunidades indígenas. Se contrataron equipos integrados por médicos, odontólogos, enfermeros, auxiliares de enfermería, auxiliares de laboratorio y agentes indígenas de la salud[2]. Esto está mejorando la calidad de los servicios, e incluso se ha logrado disminuir la tasa de mortalidad de las comunidades.

La COIAB participó también de la Conferencia Nacional de Salud Indígena, realizada del 14 al 18 de mayo de 2001.

La Conferencia Nacional es una instancia formada por representantes de los pueblos indígenas, de los organismos públicos que prestan servicios de salud para las comunidades indígenas y de los funcionarios de las instituciones públicas y privadas que actúan en el área. La composición de la Conferencia se basa en principios paritarios, o sea, 50% de indígenas y 50% de personas no-indígenas. Sus objetivos principales son evaluar las políticas públicas de salud a nivel nacional y presentar recomendaciones para su perfeccionamiento. La Conferencia Nacional se realiza cada cuatro años, bajo los auspicios del Ministerio de Salud.

608

La actuación de la COIAB fue significativa en la definición de propuestas para la atención de la salud indígena en las áreas de modelo de gestión y organización de los servicios de salud, monitoreo de la salud, estrategia de prevención y control de las enfermedades transmisibles sexualmente, fortalecimiento del control social, formación de agentes indígenas de salud, desarrollo de recursos humanos para la actuación en culturas diferenciadas, sobremedicación y prácticas tradicionales, ética de la investigación, propiedad intelectual y patente, producción y comercialización de alimentos en las comunidades.

Ex dirigente de COIAB electo Coordinador General de COICA

El VI Congreso de Coordinación de las Organizaciones Indígenas de la Cuenca Amazónica – COICA, realizado en la ciudad de Leticia, Colombia, del 11 al 15 de junio de 2001 eligió a Sebastiao Haji Machineri como coordinador general de la entidad durante la gestión 2001/2004. Machineri fue coordinador de la COIAB en el período de 1994 a 1996.

En el VI Congreso participaron 90 delegados indígenas de los países amazónicos y varios representantes de entidades simpatizantes de Europa, América del Norte y América del Sur. La delegación de COIAB estaba integrada por 15 líderes.

El VI Congreso, después de hacer un balance de la realidad indígena y del trabajo realizado por las organizaciones indígenas de los diferentes países amazónicos durante los 4 últimos años, definió líneas y propuestas de acción, para responder a los desafíos planteados por cuestiones como la explotación de recursos naturales en territorios indígenas (petróleo, minería, madera, etc.), el cambio climático, la biodiversidad, los conocimientos tradicionales, los recursos genéticos, la protección de los conocimientos tradicionales, la regularización de las tierras indígenas, el desarrollo sostenible, las áreas protegidas y territorios indígenas, el Foro Permanente sobre los derechos indígenas de la ONU, las asociaciones y alianzas[3].

Foro Indígena Amazónico sobre el Cambio Climático

El Foro Indígena Amazónico sobre Cambio Climático fue promovido por la COIAB, en asociación con COICA, con apoyo de la Alianza Amazónica, de la GTZ (Cooperación Técnica Alemana) y otras instituciones del 8 al 11 de octubre de 2001, en Manaus. El objetivo del evento era analizar el problema del cambio climático, la discusión de

609

las medidas que están siendo propuestas por los gobiernos y otros sectores para atenuarlo, y definir políticas comunes en favor de los pueblos indígenas y otros habitantes de los bosques.

Las direcciones indígenas y locales presentes en el Foro reafirmaron la importancia de los conocimientos de los pueblos y comunidades con estilos de vida tradicionales para el equilibrio del medio ambiente y la protección de la biodiversidad y de los bosques tropicales nativos. También cuestionaron el hecho de que ninguna organización indígena tiene participación adecuada en las discusiones y tomas de decisión sobre el cambio climático y las negociaciones del Protocolo de Kioto; lamentaron por otra parte la exclusión de los bosques tropicales nativos en los mecanismos de desarrollo limpio; y decidieron, finalmente, llegar a un denominador común en la comprensión del problema del cambio climático y trabajar en busca de soluciones que incluyan el punto de vista de sus pueblos y comunidades.

La Conferencia Mundial contra el Racismo y los derechos de los pueblos indígenas en el Brasil

La Conferencia Mundial Contra el Racismo, además de su destaque internacional, sirvió para desencadenar discusiones internas sobre la discriminación a la que están sometidos los pueblos indígenas y otros segmentos de la sociedad brasileña. En ese sentido, el gobierno federal instituyó el "Comité Nacional para la preparación de la participación brasileña en la Conferencia Mundial contra el Racismo", con la participación de representantes de organismos públicos y de la sociedad civil, incluyendo a los indígenas.

El Comité realizó la Conferencia Nacional contra el Racismo, los días 7 y 8 de julio en la ciudad de Río de Janeiro, para presentar propuestas a la Presidencia de la República con el objetivo de orientar la participación del Brasil en la Conferencia Mundial. En la Conferencia Nacional participaron representantes negros, indígenas, y discapacitados, entre otros diversos sectores sociales afectados por el racismo y la discriminación. La Conferencia Nacional aprobó diversas propuestas que fueron enviadas a la Presidencia de la República. La mayor parte de las propuestas fueron aprobadas por el Presidente Fernando Henrique Cardoso.

Algunas de las propuestas aprobadas fueron:

- Aprobación urgente por parte del Congreso Nacional de un nuevo Estatuto del Indio y de las Comunidades Indígenas;
- Finalización de la demarcación de las Tierras Indígenas – protección territorial y expulsión de invasores;
- Reestructuración de la Fundación Nacional del Indio;

610

- Aprobación por parte del Gobierno Federal y el Congreso Nacional de medidas para la protección de la sabiduría indígena., de los conocimientos tradicionales y del patrimonio genético, incluyendo la protección de la biodiversidad;
- Realización por parte del Gobierno Federal de censos de poblaciones indígenas;
- Ratificación e implementación de los tratados internacionales que garantizan los derechos indígenas, como el Convenio 169 de la OIT, la Declaración Internacional de los Derechos de los Pueblos Indígenas de la ONU y la Declaración Americana sobre los Derechos de los Pueblos Indígenas de la OEA;
- Creación de un Foro Permanente sobre Derechos Originarios Afro-indígenas.

La delegación oficial brasileña tuvo una participación destacada en los capítulos que trataban sobre los pueblos indígenas en la Conferencia Mundial Contra el Racismo, que aprobó la Declaración y Plan de Acción contra el Racismo, especialmente en cuanto a la adopción de la expresión "pueblos indígenas"[4]. A través de esos documentos los estados reconocieron que los pueblos indígenas son víctimas del racismo y la discriminación y destacaron la necesidad de que se adopten medidas constantemente para combatir esos problemas.

Estatuto del Indio

Se encuentra en el Congreso Nacional, desde 1991, el Proyecto de Ley No. 2.057/91, que instituyó el Estatuto de las sociedades indígenas.

En 2001, durante los eventos relacionados con la Conferencia Mundial contra el Racismo realizada en Durban, Sudáfrica, el gobierno federal se comprometió a aprobar el nuevo Estatuto de los Pueblos Indígenas como medida para combatir la discriminación contra los indígenas. Este compromiso fue incluido en el documento oficial brasileño presentado en la Conferencia Mundial, por reconocer, entre otras cosas, que la ley vigente discrimina a los pueblos indígenas en la medida que los considera incapaces para los actos de la vida civil.

Mientras tanto, el Proyecto de Ley permaneció formalmente paralizado en la Cámara de Diputados durante el año 2001.

Medida provisoria sobre el acceso al patrimonio genético

La medida provisoria (MP) es un acto normativo del Presidente de la República que sirve para reglamentar asuntos urgentes y tiene efectos

6116

provisorios. Cuando finaliza la validez de la MP, es posible reemitirla para renovar esos efectos. La vigencia definitiva de la MP ocurre después de su conversión por el Congreso Nacional.

La Presidencia de la República emitió la primera versión de la MP nº 2.186 en junio de 2000, con el objetivo de reglamentar el acceso al patrimonio genético y los conocimientos asociados al mismo. Varios sectores de la sociedad brasileña, incluyendo las ONGs, organizaciones indígenas y parlamentarios, se expresaron contra la MP porque, entre otros puntos, no respetaba la discusión en marcha en el Congreso Nacional. El Senado, después de cuatro años de discusión, ya había aprobado el Proyecto de Ley No. 306/95, cuya autora es la senadora Marina Silva (PT-AC), que trataba sobre el tema, y correspondía llevar su discusión a la Cámara de Diputados para su posterior aprobación[5].

La nueva reemisión prevé en el párrafo segundo del artículo 17, que tratándose de acceso a patrimonio genético situado en tierras indígenas, las hipótesis de interés público relevante de la Unión deberán ser reglamentadas por ley complementaria, en los términos del § 6º, del artículo 31 de la Constitución Federal. Las modificaciones en la reedición de la MP demuestran que el gobierno federal reconoció la validez jurídica del pedido hecho por la CONTAG.

La MP protege razonablemente los intereses indígenas, pero debe ser perfeccionada. En ese sentido es fundamental la aprobación de una ley por ser el instrumento jurídico más adecuado para ofrecer tal protección.

El Consejo de Gestión del Patrimonio Genético

El Gobierno federal emitió el Decreto 3.945/01, que reglamenta la Medida Provisoria No. 2.186, de agosto de 2001, que dispone sobre el acceso al patrimonio genético y trata sobre la composición y atribuciones del Consejo de Gestión del Patrimonio Genético. El Consejo estará constituido por representantes de 17 organismos públicos federales sin incluir la participación de los pueblos indígenas, comunidades locales o cualquier otro sector de la sociedad civil[6].

El decreto contraría las reivindicaciones de los pueblos y organizaciones indígenas que están defendiendo su participación en las instancias que tratan de sus derechos e intereses. Contraría también las discusiones que se vienen dando en el ámbito de las Naciones Unidas, que recomiendan a los estados el fortalecimiento de la participación indígena en sus instancias relacionadas con la gestión y protección de los recursos genéticos existentes en las tierras indígenas y los conocimientos tradicionales conexos.

612

Las organizaciones indígenas junto con otras organizaciones de la sociedad civil están protestando contra esa decisión del gobierno y siguen reivindicando su participación en el Consejo.

3er grado para la formación de profesores indígenas

En julio de 2001, la Universidad Estatal de Mato Grosso – UNEMAT, creó el curso de 3er grado para la formación de profesores indígenas, en el que están matriculados 200 estudiantes pertenecientes a 35 pueblos indígenas de las diversas regiones del Brasil. El curso es de gran importancia porque atiende la reivindicación de las comunidades indígenas para que la enseñanza escolar indígena sea acorde a sus culturas y se formen profesores indígenas para hacerse cargo de las aulas.

Del 7 al 11 de noviembre de 2001 fue realizado un "Curso jurídico para abogados indígenas", promovido por la Coordinación de Defensa de los Derechos Indígenas –CGDDI, de la Fundación Nacional del Indio – FUNAI, y la Universidad de Brasilia – UNB, con el apoyo del Instituto Socioambiental – ISA. El curso fue realizado en el auditorio de la Universidad de Brasilia y trató sobre los derechos constitucionales indígenas, abordando específicamente los derechos territoriales, la protección de la biodiversidad y de los conocimientos tradicionales, el derecho a la salud y la educación. Participaron del curso siete abogados indígenas y siete indígenas estudiantes de derecho.

Encuentro de los Pajés[7]

Del 4 al 6 de diciembre de 2001 se llevó a cabo el "Encuentro de los Pajés: la sabiduría y la ciencia del indígena y la propiedad industrial: reflexiones y debates", en la ciudad de São Luis, Estado de Maranhao, para discutir y encaminar propuestas sobre la protección de los conocimientos tradicionales de los pueblos indígenas y de los recursos genéticos existentes en sus tierras. Participaron del evento 22 indígenas incluyendo líderes espirituales, abogados indígenas y representantes de organizaciones indígenas e invitados de instituciones gubernamentales y no-gubernamentales de esferas relacionadas con el tema. Al término de la reunión fue aprobada la "Carta de São Luís de Maranhao"[8], que entre otros puntos afirma:

1. Que nuestros bosques se han mantenidos preservados gracias a nuestros conocimientos milenarios;
2. Como representantes indígenas, somos importantes en el proceso de discusión sobre el acceso a la biodiversidad y a los

conocimientos tradicionales conexos porque nuestras tierras y territorios contienen la mayor parte de la diversidad biológica del mundo y tienen un gran valor social, cultural, espiritual y económico;

3. Que el Gobierno de Brasil cree el espacio para que las representaciones de las comunidades indígenas puedan participar del Consejo de Gestión del Patrimonio Genético;
4. Que el Gobierno brasileño reglamente por ley el acceso a los recursos genéticos y conocimientos tradicionales y conexos, discutiendo ampliamente con las comunidades y organizaciones indígenas;
5. Nosotros, representantes indígenas, expresamos firmemente a los gobiernos y a los organismos internacionales nuestro derecho a la participación plena en los espacios de decisiones nacionales e internacionales sobre biodiversidad y conocimientos tradicionales como la Convención sobre la Diversidad Biológica (CDB), la Organización Mundial de la Propiedad Intelectual (OMPI), y el Comité Intergubernamental de Propiedad Intelectual, entre otros organismos;
6. Recomendamos que los países aprueben el Proyecto de Declaración de la ONU sobre los Derechos de los Pueblos Indígenas;
7. Como representantes indígenas, afirmamos nuestra oposición a toda forma de otorgamiento de patente que provenga de la utilización de los conocimientos tradicionales y solicitamos la creación de mecanismo punitivos para impedir el robo de nuestra diversidad;
8. Recomendamos la creación de un fondo financiado por los gobiernos y administrado por una organización indígena que tenga como objetivo subsidiar investigaciones realizadas por miembros de las comunidades;

El Encuentro tuvo gran repercusión en la prensa nacional e internacional. El documento aprobado durante su realización está siendo la principal referencia de los pueblos indígenas del Brasil para tratar asuntos relacionados con la protección de los recursos genéticos existentes en sus territorios y de sus conocimientos tradicionales.

Unión Federal y FUNAI condenados a indemnizar a los indígenas panará

El Tribunal Regional Federal de 3er Turno de 1a Región emitió su fallo condenando a la Unión Federal y a la FUNAI al pago de indemnización al pueblo panará, del Estado de Pará, por los daños (humilla-

614

ción, terror) y 170 muertes causadas en la década del 70, cuando fueron contactados y expulsados de sus tierras por causa de la construcción de la carretera Cuiaba/Santarém. La decisión entró en vigor el día 21 de noviembre de 2001, es decir que se tornó irrevocable, y no tiene precedentes porque fue la primera vez que la justicia condenó al ejecutivo al pago de indemnización a una comunidad indígena por causa de daños.

El valor de la indemnización fue fijado en 4 mil salarios mínimos (aproximadamente un millón de reales), y aunque ese monto no va a reparar todo el mal causado por el estado brasileño, sirve para fortalecer la autoestima de los panará y a apoyar la implementación de proyectos de reestructuración de la comunidad, además del hecho que la decisión se constituye en precedente que podrá ser utilizado por otros pueblos indígenas para acudir a la justicia.

La comunidad panará planteó la acción indemnizatoria en 1994, representados en juicio por abogados de ISA. En la misma época, los panará, asistidos por los abogados de ISA, plantearon una acción judicial requiriendo el reconocimiento de su territorio. En 1997, el Ministerio de Justicia emitió un decreto declaratorio y determinó la demarcación física de la tierra, reconociendo administrativamente los derechos territoriales de los panará. Poco a poco, esa comunidad está restableciendo sus derechos y recuperando su dignidad.

Condena por la masacre de los indígenas ticuna

La masacre, ocurrida el 28 de marzo de 1988, tuvo lugar en el municipio de Benjamín Constant, en la región del Alto Solimoes, cercano a la frontera del Brasil con Colombia y Perú. El día de la masacre, representantes de las comunidades Ticuna de San Leopoldo, Novo Porto Lima, Bom Pastor y Porto Espiritual, fueron sorprendidos en una emboscada cuando se reunían pacíficamente para discutir la muerte de una res por hacendados de la región[9].

La demora del juicio se debió, entre otras causas, a la discusión sobre si era de la competencia federal o estatal[10]. También hubo una discusión sobre la necesidad del juicio por un tribunal de jurado, prevaleciendo, al final, el entendimiento de que se trataba de un crimen de genocidio, de competencia de un juez ordinario.

El pueblo ticuna, la COIAB y entidades aliadas realizaron campañas nacionales e internacionales pidiendo la condena de los autores del genocidio durante el curso del proceso.

615

Reforma de la FUNAI

El Ministerio de Justicia aprobó el Decreto No. 1.006 el 1º de noviembre, creando el Grupo de Trabajo responsable para proponer la reforma de la FUNAI. La reforma de FUNAI es necesaria por varios motivos: el organismo dispone de apenas 2.300 funcionarios para atender a las comunidades indígenas, su presupuesto es insuficiente, los cambios de la legislación indigenista y las reformas generales que están ocurriendo en el ámbito de los órganos de la administración pública implican necesariamente su reforma y actualización para prestar los servicios públicos de su competencia.

Programa de "Ciudadanía Indígena en Río Negro"

La Federación de las Organizaciones Indígenas en Río Negro – FOIRN, celebró en el mes de septiembre de 2001 un convenio con la Secretaría de Estado de Derechos Humanos, organismo del Ministerio de Justicia, con el objetivo de facilitar el acceso a documentación básica a los indígenas de la región que por problemas de transporte, gastos para obtener la documentación e incluso dificultad para comunicarse en portugués, no pueden en muchos casos ni siquiera obtener el certificado de nacimiento. De acuerdo con estimaciones de las autoridades locales, aproximadamente cinco mil indígenas de Río Negro no poseían título de elector, y por lo tanto no podían participar en las elecciones a cargos políticos. El proyecto también tiene como objetivo considerar los demás problemas que restringen el ejercicio de la ciudadanía indígena e indicar soluciones para resolverlos.

De noviembre a diciembre de 2001, se realizaron campañas en la ciudad de San Gabriel de Cachoeira y en diversas comunidades ubicadas en los ríos de la cuenca del Río Negro, en las que se atendieron 2.435 personas que recibieron certificados de nacimiento, cédula de identidad, catastro de persona física, el permiso de trabajo y el título electoral, y el certificado de matrimonio civil.

Conforme a lo previsto en el proyecto, del 21 al 25 de enero de 2002, la FOIRN, junto con el Instituto Socioambiental promovió el seminario sobre "Derechos Indígenas en el Río Negro", en el que participaron 155 representantes de las 49 organizaciones que forman parte de FOIRN, además de técnicos y funcionarios de diversas instituciones que actúan en el área.

Los temas abordados fueron la demarcación de tierras, el derecho a la documentación, la protección de los recursos hídricos, de los recursos genéticos existentes en las tierras indígenas y los conocimientos tradicionales, programas de apoyo para el desarrollo econó-

616

mico sostenible de las comunidades indígenas y políticas públicas en las áreas de la salud y la educación.

A partir de las discusiones se fue consolidando un documento sobre los factores que restringen la ciudadanía indígena y propuestas para superarlos[11]. La FOIRN decidió que enviaría una propuesta a la Secretaría de Estado de los Derechos Humanos, resaltando la necesidad de continuar con el proyecto, el cual según la Secretaría tiene posibilidad de ser aceptado.

La experiencia de la FOIRN, además de atender la demanda de las comunidades de Río Negro, podrá servir como referencia al gobierno federal y las organizaciones indígenas para asistir a las comunidades indígenas e incluso a las personas noindígenas de la Amazonía con problemas similares.

Conclusión

Los datos antes mencionados demuestran que la situación de los pueblos indígenas va mejorando en el Brasil. Las tierras están siendo demarcadas, existe participación de las comunidades indígenas en las instancias que tratan sus intereses, la justicia está tomando decisiones importantes para proteger los derechos indígenas, las organizaciones indígenas se están fortaleciendo y garantizando su propia autonomía, y el poder ejecutivo está decretando medidas importantes que podrán beneficiar a las comunidades indígenas.

Aún así es necesario considerar que hay muchas controversias a ser resueltas. El Proyecto de Ley que instituye el nuevo Estatuto de los Pueblos Indígenas se encuentra paralizado en la Cámara de Diputados desde 1994; los derechos de los pueblos indígenas son violados y en muchos casos no se toman medidas administrativas para restablecerlos o los hechos no son llevados a la justicia; los procesos de demarcación de muchas tierras se encuentran paralizados e incluso otras ya demarcadas están invadidas por hacendados y ocupantes, además de las frecuentes invasiones de las empresas madereras, pescadores o "garimpeiros" (buscadores de oro). El gobierno anuncia propuestas para reformar la política indigenista, pero no adopta medidas consecuentes para llevarlas adelante.

El poder ejecutivo sigue excluyendo la participación indígena en las instancias que tratan sobre sus intereses e incluso en aquellas donde ya han participado, ocurre apenas en carácter consultivo sin poderes legislativos. Las políticas en el área de la salud, la educación y el desarrollo sostenible están siendo implementadas, pero todavía precisan más apoyo para ser consolidadas. Además, el avance logrado por los pueblos indígenas de la Amazonía todavía no alcanzó las

617

demás regiones del país, donde hay graves problemas de tierra y son precarios los sectores de la salud, educación, actividades económicas e incluso hay dificultades para acceder al agua potable.

Por lo tanto, es necesario que el gobierno adopte medidas para superar las problemáticas antes mencionadas, como finalizar las demarcaciones, proceder al retiro de las personas no-indígenas que se encuentran ilegalmente en las tierras indígenas y crear programas de vigilancia y fiscalización para evitar nuevas invasiones.

Es necesario que el gobierno federal ejecute los compromisos asumidos en la Conferencia Mundial contra el Racismo y promueva de hecho la reestructuración de la FUNAI, para que el organismo pueda tener una actuación consecuente junto con los pueblos y comunidades indígenas.

Notas y referencias

1 Informe de la COIAB año 2001 – COIAB, marzo de 2002.
2 Los agentes indígenas de salud están siendo capacitados para brindar atención a sus comunidades.
3 Resoluciones nº I y II del VI Congreso de la COICA – junio de 2001.
4 Para los pueblos indígenas del Brasil la adopción de esa expresión tal como se encuentra en los documentos aprobados por la Conferencia Mundial contra el Racismo significó un avance, ya que antes había una fuerte resistencia interna por parte de sectores del gobierno que alegaban que su empleo creaba la posibilidad de interferencias externas en la soberanía del país. Con este nuevo paso, se espera que la legislación brasileña también comience a tratar a los indios como pueblos indígenas.
5 Lima, André. Instituto Socioambiental.Comunicación personal. Junio de 2001.
6 Toledo Diniz, Lilia y Fernando Mathias Batista, Instituto Socioambiental. Comunicación personal.
7 Pajés: shamanes (n.del ed.)
8 "Carta de São Luís", líderes indígenas, diciembre de 2001.
9 Toledo Diniz, Lilia y Fernando Mathias Batista. Comunicación personal.
10 El proceso llegó al Tribunal Federal Supremo– STF, instancia máxima del poder judicial, que decidió a favor de la Justicia Federal para procesar y juzgar el caso.
11 Los principales problemas señalados estaban relacionados con la falta de abogados para defender los derechos indígenas, la necesidad de finalizar la demarcación de tierras de Río Negro y de apoyar proyectos de desarrollo económico, problemas de invasión de los ríos por parte de pescadores. (Informe Final del Proyecto Ciudadanía Indígena en el Río Negro – FOIRN, marzo de 2002)

618

PARAGUAY

La iniciativa del Poder Ejecutivo de reformar la Ley 904/81 *Estatuto de Comunidades Indígenas*, dada a conocer por la Secretaría de la Reforma de la Presidencia de la República el 18 de octubre del 2000, es el corolario de la política indigenista nacional de los últimos 3 años y, a su vez, la señal más clara de lo hecho por el Estado en este período: negar a los pueblos indígenas sus derechos y hasta su propia existencia, prestándoles la menor atención posible en términos financieros y políticos.

La reforma de la Ley 904/81

La aprobación del *Estatuto de Comunidades Indígenas* en 1981, que reconoció la existencia legal de las comunidades indígenas y su derecho a la titularidad de la tierra, indicando una base de restitución mínima por familia: 100 hectáreas en el Chaco y 20 en la Región Oriental, constituyó un avance jurídico sin precedentes en su tiempo. Asimismo, la creación del Instituto Nacional del Indígena (INDI) estableció, al menos en teoría, un órgano de suficiencia administrativa para aplicar la política indigenista. Sin embargo, ésta no fue más que otra ley "buena", de escasa vigencia en la práctica.

La posterior Constitución Nacional de 1992, en su capítulo V, y la Ley 234/93, que ratificó el Convenio 169 "Sobre Pueblos Indígenas y Tribales en países independientes", de la Organización Internacional del Trabajo (OIT), amplían aún más las garantías de las comunidades indígenas del Paraguay, reconociendo su condición de pueblos, su preexistencia al Estado paraguayo y su derecho a la propiedad comunitaria en extensiones determinadas no simplemente por una cifra arbitraria sino por las necesidades socioculturales de estos pueblos (Art. 64 de la Constitución Nacional). No obstante, el parámetro que en la práctica rige para restitución de tierras es el de la Ley 904/81, y no los criterios constitucionales y la normativa internacional.

Varios son los antecedentes que llevan al gobierno del presidente Luis González Macchi a plantear la iniciativa del proyecto de ley "Que regula el funcionamiento de los mecanismos responsables de la política indigenista nacional": en primer término, el proceso más amplio de la reforma del Estado motivado por el déficit fiscal acumulado de los últimos años; por otro lado, el mayor espacio público de las reivindicaciones territoriales indígenas, consecuencia del creciente protagonismo de las comunidades y organizaciones indígenas, que han cuestionado con plena legitimidad y legalidad fundadas en la Constitución y el Convenio 169 de la OIT, la injusta distribución de

619

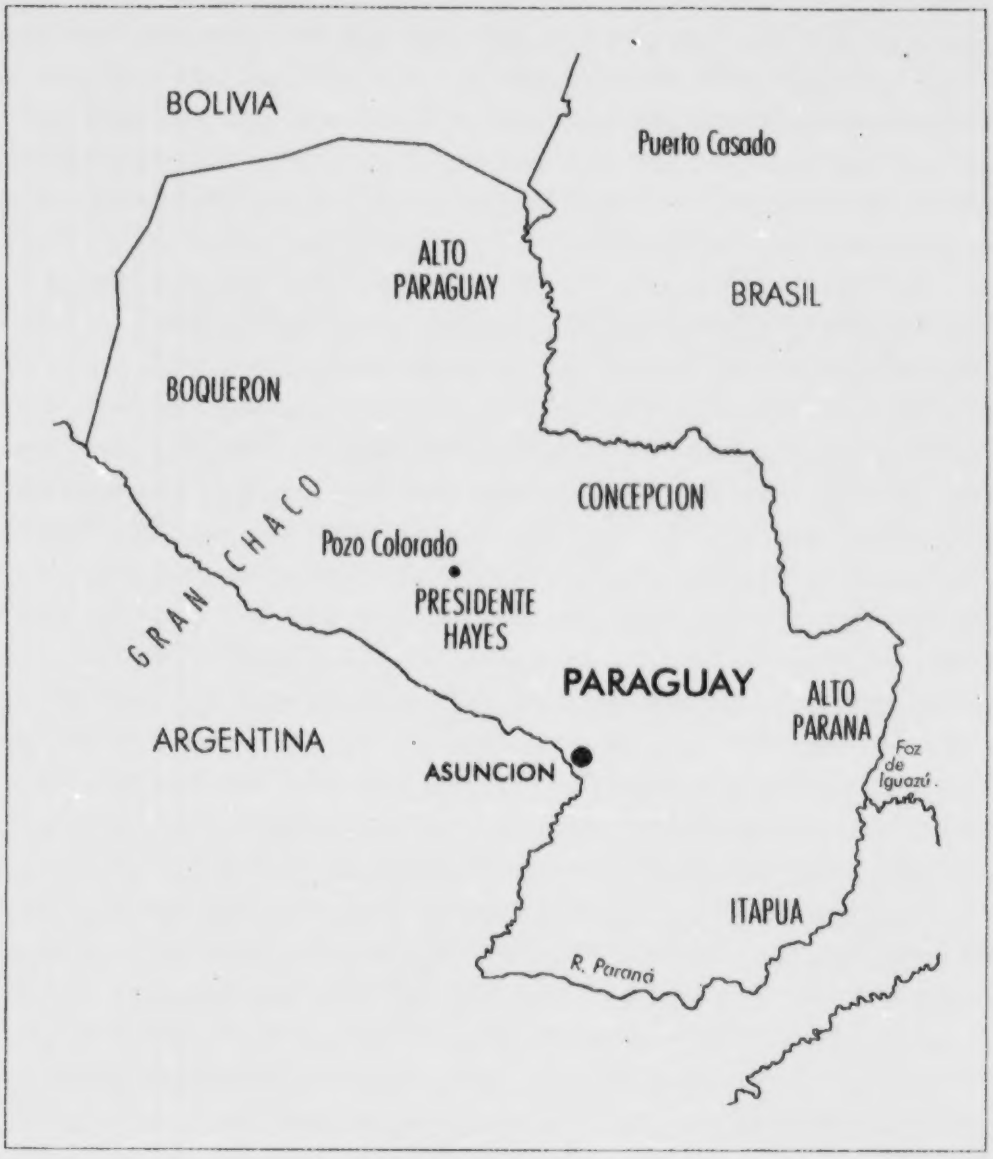
tierras del país, base del poder político y económico; y, por último, la demanda de los gobiernos departamentales de contar con mayores rubros para sus programas asistenciales, de menor costo económico y político para el gobierno central, unidos a la histórica corrupción e ineficacia del INDI. Todas ellas son razones no develadas y argumentos que el Gobierno y los terratenientes aliados al mismo han ido sumando a favor de la reforma de la Ley 904/81.

Desde que apareció el proyecto de ley citado, originado en la Secretaría de la Reforma de la Presidencia de la República, diversas voces se manifestaron en contra del mismo. Durante los primeros meses del año, la Conferencia Episcopal Paraguaya (CEP), la Coordinadora de Líderes del Bajo Chaco (CLBC), la Red de Organizaciones al Servicio de los Pueblos Indígenas (Red Indigenista), el Movimiento 19 de Abril (M19A) y el mismo INDI cuestionaron ese proyecto de ley. Las observaciones formalmente remitidas al Poder Ejecutivo no solamente criticaban el contenido del proyecto sino también el procedimiento de elaboración, apuntando al hecho de que no se dio participación ni se consultó a los pueblos indígenas sobre la reforma, requisito que exigen los artículos 6 y 7 del Convenio 169 de la OIT a los Estados signatarios que pretenden sancionar o cambiar leyes que afectan directamente a los pueblos indígenas.

En cuanto a su contenido, el proyecto, por ejemplo, no reconoce a los pueblos indígenas su preexistencia respecto del Estado paraguayo, tal como lo hace la Constitución Nacional, siendo este principio la base de la restitución territorial, de su derecho a la autodeterminación y a su propia identidad. Así también, el proyecto reduce el mínimo de tierras exigibles al Estado para cada familia indígena en un 50% con relación al criterio estipulado por la Ley 904/81. Esto revela la intención de minimizar, y/o legitimar, el déficit de territorios y tierras indígenas restituidos por el Estado, que está lejos de satisfacer el criterio constitucional del artículo 64.

A pesar de esto, y de que el mismo INDI elaboró una propuesta que dio a conocer las críticas de las organizaciones indigenistas y de la Asociación de Parcialidades Indígenas (API), el Poder Ejecutivo presentó el 30 de abril del 2001 su cuestionado proyecto de ley a la Cámara de Senadores, y fue automáticamente enviado a cuatro comisiones para su estudio. A finales de mayo, varias organizaciones y representantes indígenas del Chaco y la Región Oriental conformaron una Comisión por la Autodeterminación Indígena para la participación en la reforma de la Ley 904/81, y reclamaron el retiro del proyecto del Poder Ejecutivo y/o la prórroga de su tratamiento en el Congreso, así como también una consulta indígena de alcance nacional y un año de plazo para su realización.

620



Movilización indígena

A inicios de junio, la API convocó a más de 250 indígenas quienes llegaron hasta la capital y acamparon frente al Congreso para exigir participación en la reforma de la Ley 904/81. El presidente González Macchi les prometió participación, y los dirigentes de la API acordaron con el ministro de Educación y Cultura y la ministra de la Mujer un plazo de 30 días para realizar la consulta. Este fue el punto de disidencia con la Comisión por la Autodeterminación y otras organizaciones, que exigían un año de plazo para la consulta y una participación y representación más amplia, no exclusivamente mediada

BEST COPY AVAILABLE

621

por la API. Finalmente, esta asociación se sumó a la propuesta de extender el plazo a un año, firmando un acuerdo con la Comisión por la Autodeterminación, en ocasión de la asamblea de la CLBC realizada a finales de julio.

Otros dos encuentros llevados a cabo en agosto en Boquerón y en Alto Paraguay por integrantes de la Comisión por la Autodeterminación, ratificaron las demandas señaladas más arriba y concertaron la idea de realizar una movilización masiva para obligar al Gobierno al cumplimiento de las mismas. En la Región Oriental, varias organizaciones manifestaron su preocupación y reclamaron la necesidad de la consulta a las comunidades. El Encuentro Nacional de Mujeres Indígenas, auspiciado por la Coordinadora Nacional de Mujeres Rurales e Indígenas (CONAMURI), también demandó al Gobierno la participación de los pueblos indígenas y de las mujeres indígenas en particular en la definición de políticas que les afectan.

Entretanto, 3 de las 4 comisiones de la Cámara de Senadores que recibieron el proyecto de ley del Poder Ejecutivo dictaminaron a favor del rechazo del mismo. A estos cuestionamientos se agregan las interpelaciones sobre la elaboración y el contenido del proyecto de ley formuladas al Estado paraguayo por la Comisión Interamericana de Derechos Humanos (CIDH) y la OIT.

Los días 11 y 12 de octubre se realizó, en Pozo Colorado, una movilización de aproximadamente 5.000 personas pertenecientes a comunidades de todo el Chaco, convocadas por la Comisión por la Autodeterminación. Previamente, una comisión negociadora se entrevistó con el presidente de la República, Luis González Macchi, el ministro de Justicia y Trabajo, Silvio Ferreira, y el gobernador de Boquerón, Orlando Penner. El mandatario se comprometió a posibilitar la participación de los y las indígenas a través de la consulta, arguyendo que el proyecto de ley no podía ser retirado pero sí "congelado" en el Congreso, recomendando el plazo de un mes para realizar la consulta en un único congreso nacional indígena en Boquerón, donde se aprobaría la propuesta indígena de ley. No se trataron en esta reunión otras demandas indígenas que también originaron la movilización, como el pago de los reclamos de tierra ya resueltos administrativamente.

Finalmente, la Comisión por la Autodeterminación ha preparado una propuesta de consulta que contempla el estudio de un borrador de ley y su posterior discusión en asambleas regionales en todo el país, que finalizará en el congreso nacional indígena. Para las asambleas y el congreso se exigirá financiación del Gobierno, lo que también permitiría asegurar el carácter vinculante de sus resultados.

622

Reivindicaciones territoriales indígenas

Durante el año 2001 no hubo fondos para el pago de indemnizaciones de propiedades afectadas por reclamos indígenas, y por ende no se ha dado respuesta a reivindicación alguna[1].

Al INDI se le asignaron inicialmente rubros para un funcionamiento mínimo hasta el mes de junio y, luego de un pedido de ampliación presupuestaria que tuvo curso favorable en el Parlamento, se obtuvieron recursos adicionales para completar el año. En el proyecto de ley del Presupuesto General de Gastos de la Nación para el 2002, presentado por el Poder Ejecutivo al Parlamento, se contempla la suma de 4.049 millones de guaraníes para el INDI (aproximadamente 880.000 US$), la mitad de lo asignado este año. Hasta ahora no se han presupuestado los fondos de contrapartida para compra de tierras indígenas exigidos al Gobierno paraguayo como parte de los planes de mitigación de impactos socioambientales de proyectos de infraestructura vial en la Región Oriental, financiados por el Banco Mundial, y en el Chaco financiados por el Banco Interamericano de Desarrollo.

La Comisión de Reforma Agraria de la Cámara de Senadores dictaminó en contra de la expropiación de 158.000 hectáreas reclamadas por la población de Puerto Casado, departamento del Alto Paraguay, que cuenta con aproximadamente 2.000 indígenas maskoy; este reclamo afecta a parte de un millón de hectáreas adquiridas por la Secta Moon en el Chaco. Esta decisión, así como las intervenciones poco convincentes de distintas autoridades nacionales en el aseguramiento de las 158.000 hectáreas en las que se encuentra asentada la mitad de la población civil de un municipio, cuestiona no sólo la labor del Gobierno para posibilitar una igualdad en el acceso a los recursos productivos, sino la vigencia de su ordenamiento jurídico en su propio territorio.

La decisión que el año pasado había tomado la citada comisión parlamentaria, confirmada luego por el pleno del Senado, de rechazar los pedidos de expropiación de las comunidades Sawhoyamaxa[2] (14.404 hectáreas) y Xakmok Kásek (10.700 hectáreas) del pueblo enxet, sirvió de base a dichas comunidades para denunciar al Estado paraguayo ante la CIDH por la arbitrariedad de dicho rechazo. Tras la intervención de esta instancia, el Gobierno solicitó la solución amistosa en ambos casos y se espera contar a fin de año con una propuesta oficial a estos reclamos de tierra.

En otro caso, referente a la reivindicación de la comunidad Yakye Axa (18.179 hectáreas), presentado ante la CIDH el año pasado, a causa del fallo arbitrario de la Corte Suprema de Justicia en contra de sus derechos de cacería y recolección en las tierras reclamadas, el Gobierno solicitó solución amistosa y, conforme a ello, se realizaron

623

varias reuniones entre representantes del Estado, indígenas y sus abogados. En principio, el Estado reconoció el carácter de hábitat tradicional de la comunidad de las tierras reclamadas, sin embargo, no se pudo llegar a acuerdos satisfactorios por causa de la actitud de la presidenta del INDI, Olga Rojas de Báez, quien asumió la defensa de los intereses de los supuestos titulares antes que los de la comunidad. Finalmente, en un hecho de mayor gravedad, el juez penal Ramón Ángel De la Cruz Martínez Caimén de la circunscripción judicial de Concepción, dispuso el 29 de agosto del 2001, en virtud de una denuncia criminal entablada en contra de la comunidad, el desalojo de la misma de su asentamiento al borde de la ruta frente a las tierras reclamadas, ordenando la ejecución del mismo al propio INDI, al Ministerio del Interior y al Ministerio de Obras Públicas y Comunicaciones (MOPC). Esto, obviamente, motivó el retiro de la comunidad y sus representantes convencionales del proceso de solución amistosa, quienes solicitaron a la CIDH medidas cautelares para evitar el desalojo.

En un acto sin precedentes, la CIDH dictó las medidas cautelares solicitadas, ordenando al Estado paraguayo la suspensión de cualquier orden judicial administrativa que implique el desalojo o levantamiento de las viviendas de la comunidad. El presidente de la Corte Suprema de Justicia solicitó al juez Martínez la no ejecución de la expulsión y peticionó al MOPC y al Ministerio del Interior que actúen conforme a lo solicitado por la CIDH. Sobre esta base está pendiente una decisión definitiva de la Corte Suprema respecto a la continuidad del proceso en contra de la comunidad Yakye Axa y al fallo del juez. Unas 250 personas de la comunidad Ypa'u Señorita del pueblo mbya se instalaron en Asunción desde el 18 de abril del 2001, para exigir el cumplimiento de una orden de desalojo dictada en contra de campesinos/as sin tierra que ocupaban su propiedad, de 2.119 hectáreas, desde el año 1993. Innumerables jornadas de protesta y de negociación con las más diversas autoridades (presidentes de los tres poderes, ministros, presidentes del IBR e INDI) y con representantes del sector campesino, finalmente terminaron el 25 de junio con el desalojo pacífico de los y las ocupantes y su reubicación en otras tierras. Sin embargo, los daños que ocasionaron al hábitat de esta comunidad y a la misma integridad física y psicosocial de sus integrantes durante los años que duró la ocupación son, en gran parte, irreversibles. Este conflicto es el único en el que se logró algún tipo de solución. Sin embargo, hay otras 10 comunidades indígenas de la Región Oriental con sus tierras ocupadas sin que se haya practicado algún tipo de intervención a su favor.

624

Violaciones de otros derechos

Una situación que guarda relación con el tema anterior es la migración de hombres, mujeres, niños y niñas de los pueblos mbya y ava guaraní a los grandes centros urbanos del país, quienes ocupan un nivel aún más bajo dentro de la escala de la marginalidad urbana. Las causas de esta migración son múltiples: inseguridad en las comunidades de origen, falta de alternativas de subsistencia y de apoyo oficial, desempleo, extraños que se benefician con la prostitución de niñas y niños, etc. Inclusive se citan causas culturales, como una resignificación de la cultura del *oguata*[3] o el respeto a la autonomía personal, extendida también a los niños y niñas.

Ciertamente, todas estas causas concurren, pero la fundamental es que el Estado no haya asegurado suficientes tierras a los pueblos indígenas de la Región Oriental para su subsistencia material y cultural. Según la prensa, se realizaron 17 operativos "retorno", implementados por el INDI con exiguos recursos, mediante los cuales aproximadamente mil indígenas fueron llevados de vuelta a sus comunidades. Se implementaron al menos dos procedimientos judiciales para terminar con el "desastre". El más llamativo, llevado a cabo por el fiscal del Crimen Rafael Fernández y la fiscala del Menor Cristina Arévalos, comprendió el "rescate" de 58 niños y niñas indígenas, la detención de 11 indígenas mayores de edad y hasta el procesamiento por omisión de auxilio de la presidenta y los miembros del consejo del INDI. Finalmente, luego de un largo periplo de encierros, los niños y niñas volvieron a sus comunidades, la presidenta y el consejo del INDI fueron absueltos y los indígenas mayores liberados sin que se haya probado que abusaban sexualmente de los y las menores o que se beneficiaban de su prostitución[4]. Lo que queda claro es que existe un camino de ida y vuelta cada vez más transitado de marginalidad y búsqueda de supervivencia entre las comunidades indígenas y las ciudades, y que la marginalidad urbana, indudablemente, es aún más lesiva para las mujeres, niños y niñas indígenas.

En lo que se refiere a la situación de salud de los pueblos indígenas, cabe señalar algunos indicadores ilustrativos publicados este año: según un funcionario de la Organización Panamericana de la Salud, la media de indígenas enfermos de tuberculosis es 10 veces superior a la nacional, y una de las más altas del mundo. Conforme a datos oficiales, el 80% de la población indígena chaqueña tiene mal de chagas, dos de las tres víctimas de Hanta Virus registradas este año eranindígenas. En cuanto a la educación, un maestro guaraní, en el primer Congreso de Educación Indígena, resumió la situación: "no existe una educación indígena sino una educación escolar paraguaya en comunidades indígenas". Vale citar que el gasto total destinado

625

para educación indígena es de apenas 800 millones de guaraníes, aproximadamente 174.000 dólares.

En dos casos de crímenes cometidos en el interior de comunidades indígenas, el asesinato de una mujer ayorea embarazada atribuido a su marido, y el asesinato de Heinrich Loewen, enlhet de Peseempo'o, se llegó a un acuerdo conciliatorio entre los familiares de las víctimas y los supuestos homicidas, contemplando el derecho consuetudinario indígena y la nueva legislación procesal penal. Sin embargo, la aplicación de esta legislación ha sido totalmente irregular, en algunos casos se aplica y en otros no, y en varios procesos fue totalmente ignorada, como en el caso de la causa penal en contra de la comunidad Yakye Axa antes mencionado. Vale mencionar, que varios casos de crímenes y atentados en contra de indígenas no han avanzado en absoluto en su investigación, como el asesinato de Francisco Arce, miembro de la comunidad, que ocurrió en la estancia donde éste trabajaba.

Conclusiones y recomendaciones

El resultado del proceso de la reforma de la Ley 904/81 –conforme al apoyo o no de la consulta indígena y sus resultados- será el indicador que determinará una política definitivamente genocida o una política indigenista progresista.

Por todo ello recomendamos apoyar la consulta indígena y reconocer el carácter vinculante de sus resultados, a fin de instaurar una política indigenista adecuada, no sólo en términos jurídicos sino en la disposición efectiva de instrumentos institucionales, financieros y administrativos para la restitución territorial indígena y la vigencia de los derechos de autodeterminación y desarrollo de los pueblos indígenas. Mientras que transcurre este proceso, el Estado debe emplear todos los medios alternativos posibles para satisfacer los reclamos y las necesidades territoriales indígenas, así como sus demandas de mejoramiento en la salud, la educación, el desarrollo sostenible desde una perspectiva cultural y de género, el acceso a la justicia, etc. Para esto deben considerarse ejecutores y responsables todos los estamentos del Estado.

Notas

1. Las reivindicaciones indígenas presentadas ante el Instituto de Bienestar Rural (IBR) sobrepasan el millón de hectáreas, a las que se deberían agregar las numerosas comunidades con poca o ninguna tierra asegurada, que hasta

el presente no cuentan con información o asesoría para iniciar el proceso de recuperación territorial. Este panorama, en su conjunto, indica que de las 500 comunidades indígenas que en cifras aproximativas existen en el país, 60% cuenta con poca o ninguna tierra titulada.

2. En la fecha de su aniversario (19 de abril), el M19A organizó con más de 500 personas, un corte de ruta a la altura de la comunidad Sawhoyamaxa para protestar por el rechazo al pedido de la expropiación y exigir la participación indígena en la de reforma de la ley.
3. Se traduce este modo de ser distintivo de los y las guaraníes en su condición de caminantes de paso por el mundo y, por eso la importancia para el ethos comunitario de las visitas entre grupos no limitadas o restringidas a las personas adultas.
4. Si bien se informó de casos de niños y niñas con signos de abuso sexual, no se encuentra en la carpeta de investigación fiscal un solo diagnóstico médico en ese sentido.

ARGENTINA

Este informe se escribe mientras el país vive una situación político-económica grave: protestas sociales, violencia, caos político.

La crisis es el resultado de un proceso de alta concentración de la riqueza y el consiguiente aumento de los índices de pobreza e indigencia que se acentúa a partir de los años 90. Obligados a hacer frente a una deuda externa monstruosa y cegados por su propia avaricia los sucesivos gobiernos concretaron reformas de Estado e impusieron una política de ajuste económico, privatizaciones, venta de recursos naturales claves y flexibilización de la mano de obra.

Rumbo al colapso final

El año 2001 estuvo marcado por sucesivos fracasos en las medidas económicas adoptadas que llevaron a un mayor endeudamiento y proliferación de las protestas sociales: cortes de rutas, manifestaciones frente a los domicilios de funcionarios estatales («escraches»), huelgas, marchas, paros nacionales, etc. La respuesta fue represión indiscriminada, detención y procesamiento de los manifestantes. La protesta social se volvió causa penal. En julio el gobierno decretó una compulsiva reducción de los salarios y jubilaciones estatales del 13%

627

y una reducción del 30% en el presupuesto nacional, afectando seriamente áreas tan importantes como la salud, la educación y la asistencia social.

En un país con un índice de pobreza del 50%, desempleo global promedio de 18,3% y subempleo de 16,3%, niveles de inseguridad nunca vistos, corrupción e impunidad generalizadas, estas medidas pre-anunciaron el colapso final. Ante la negativa de la banca acreedora de atender una nueva demanda de Argentina, en diciembre el gobierno declaró el "default" financiero, confiscó los depósitos de ahorristas privados y decretó una devaluación del 40% de la moneda nacional que durante diez años había mantenido la paridad de uno a uno con el dólar estadounidense. La población consideró que se trataba de un robo y produjo saqueos a supermercados y comercios en demanda de un cambio en la política económica y la renuncia del presidente de la nación a tan sólo dos años de haber asumido. Las protestas, que habían comenzado en forma pacífica golpeando cacerolas en las calles fueron brutalmente reprimidas por las fuerzas de seguridad. En un solo día se produjeron 29 muertes y asesinatos monstruosos a manos de la policía. La crisis política fue de tal magnitud que en una semana Argentina cambió tres veces de presidente. Por decisión de la Asamblea Legislativa, controlada por uno de los partidos mayoritarios, actualmente ejerce ese cargo el Dr. Eduardo Duhalde, el mismo que perdiera la elección en 1999. Dándose así la paradoja de que quien gobierna no goza de la legitimidad de los ciudadanos.

Aún en el escenario del desconcierto generalizado existen algunos datos que merecen destacarse. Por un lado, la ciudadanía ha adoptado una actitud de férrea defensa del sistema democrático y, a diferencia de épocas pasadas, la institucionalidad si bien está en crisis, no corre peligro. Por otro lado, se está dando un fenómeno social por demás interesante: las asambleas barriales que exigen el cambio de todos los funcionarios políticos corruptos mediante elecciones generales, el juicio político a los miembros de la Corte Suprema de Justicia, y la devolución de los dineros incautados. Aunque sería arriesgado predecir qué destino tendrán finalmente estas asambleas o cuál será su resultado, por el momento son un síntoma positivo de ejercicio democrático.

Los derechos de los pueblos indígenas y la política gubernamental

Cualquier evaluación o balance del año indígena se encuadra necesariamente en el marco de los acontecimientos descriptos. El desem-

628

pleo, subempleo y pobreza, al igual que las restricciones presupuestarias para programas estatales de asistencia social, los han afectado en algunos casos más que a otros sectores de la población. Las ocupaciones de tierras y territorios indígenas y la apropiación y destrucción de sus recursos naturales se acrecentaron desconociendo los derechos indígenas sobre ellos. Paralelamente, creció la autoconciencia social indígena y su fuerza organizativa parece estar adquiriendo nuevo impulso. Se observa un mayor interés por la búsqueda de

BEST COPY AVAILABLE

conexiones entre pueblos, el pronunciamiento conjunto de demandas y una tendencia creciente a la capacitación y formación en cuestiones relacionadas con sus asuntos. Pero veámoslo en detalle.

Ideología

Si bien se observa que existe entre algunos funcionarios estatales mayor información y aceptación de la presencia indígena en Argentina, la mayoría ignora el marco legal de protección de los derechos especiales de los pueblos indígenas. Áreas claves como la Secretaría de Energía y Combustibles de la Nación, encargada de aprobar las exploraciones de hidrocarburos, no sabe que la consulta y participación indígena es un derecho constitucional protegido por el derecho internacional en virtud del Convenio 169 de la Organización del Trabajo (OIT) vigente.

A la ignorancia se suma la incomprensión o el no-reconocimiento del carácter singular de las culturas indígenas, por lo cual al proponer o adoptar medidas que los tienen como destinatarios, se sigue el retrógrado programa integracionista-paternalista. El deterioro de los derechos territoriales indígenas se trata como problema de «desarrollo». Así, omitiendo el principio constitucional de «tierras tradicionalmente ocupadas» y el de autodeterminación (Convenio 169), un reciente proyecto de ley del Senado prescribe la utilización que deberán darle las comunidades a sus tierras («explotación agropecuaria, forestal, minera, industrial, artesanal»).

INAI: sin estructura, sin presupuesto suficiente, sin participación indígena

El Instituto Nacional de Asuntos Indígenas (INAI) fue creado por ley en 1985 como organismo descentralizado con participación indígena. Pero la ley nunca se implementó. Dos decretos del Poder Ejecutivo Nacional de 1991 y 1994 lo desjerarquizaron, transformándolo en una oficina dependiente de otros organismos. En agosto de 2000 un fallo de la justicia nacional ordenó su constitución, en un plazo de 30 días, según los términos de la ley. En febrero de 2002, vencido holgadamente el plazo, su situación jurídica sigue siendo irregular: carece de estructura y presupuesto propio. No cuenta con participación indígena y sus recursos son exiguos. Como organismo descentralizado del Estado requiere un mínimo de US$ 10.000.000 por año, sin embargo contó con US$ 500.000 en 2001. Consiguientemente, no pudo cumplir con uno de sus principales objetivos que es la intervención en los procesos de demarcación y entrega de tierras y muy pocos proyectos indígenas pudieron recibir financiamiento.

630

Planes y programas en ejecución: estado de avance

En 1996 se lanzó el Plan Nacional de Regularización de Tierras Fiscales (aproximadamente 2.000.000 de hectáreas) para las comunidades indígenas residentes en las provincias de Chubut, Jujuy y Río Negro. Se firmaron los convenios con las respectivas provincias y se hicieron transferencias de dinero para su ejecución. A casi seis años, la situación es la siguiente:

Chubut: no ha habido participación indígena a pesar del decreto provincial 109/97 que crea la figura del mediador aborigen en el proceso de verificación y mensura; el Instituto Autárquico de Colonización brinda escasa y confusa información a las comunidades e impone los límites sin consulta previa a los indígenas. El único título de propiedad entregado a la comunidad Mallín de los Cual (9.082 has) es imperfecto y violatorio de los derechos indígenas pues establece la prohibición de enajenación de las tierras por un plazo de veinte años, mientras que el artículo constitucional que rige en la materia no fija límites ni plazos.

Jujuy: fue durante el año la más favorecida por el Secretario de Desarrollo Social a la sazón presidente a cargo del INAI, oriundo de la provincia y candidato a senador nacional en las elecciones de 2001. Contrastando con la poca capacidad de gestión y ejecución de la provincia, los pueblos atacama, kolla y omaguaca se reunieron en una gran asamblea de más de 300 personas para constituir la Comisión de Participación Indígena (CPI) que entenderá en todos los aspectos referidos al citado programa en esa provincia.

Río Negro: La constitución de un equipo Coordinador Operativo de Campo a cargo de indígenas ha permitido avanzar en la realización de reuniones informativas en las comunidades. Pero no se han realizado mensuras ni entregas de títulos.

Cooperación internacional

Tres programas cuentan con apoyo internacional. El *Proyecto de Desarrollo Integral Ramón Lista* (Unión Europea, UE) destinado a comunidades del pueblo wichí de la provincia de Formosa. Sobrevivió su etapa más crítica debido a atrasos en la asignación de fondos y falta de personal directivo y técnico. El *Componente de Atención a la Población Indígena* del Programa de Atención a Poblaciones Vulnerables (Banco

631

Interamericano de Desarrollo, BID) que cubre parte de las comunidades indígenas en las provincias de Chaco, Jujuy, Salta y Formosa, continúa a pesar de marchas y contramarchas burocráticas. El proyecto de *Desarrollo de Comunidades Indígenas y Protección de la Biodiversidad* (Banco Mundial, BM) centrado en las provincias de Salta (kolla), Neuquén (mapuche) y Tucumán (diaguita-calchaquí), aún espera la conformación de la Unidad Ejecutora.

Algunos eventos significativos organizados en el año

Contrastando con la exigüidad presupuestaria para apoyar proyectos indígenas y hacer efectivo el pago de becas a estudiantes indígenas sin cumplimiento desde el 2000, el INAI disponía de recursos suficientes para realizar «eventos». En este marco se llevaron a cabo varios talleres con comunidades indígenas en diferentes provincias y se financiaron viajes de representantes indígenas a reuniones de su interés. A modo de ejemplo se citan dos de estos eventos:

Restitución de los restos del cacique Mariano Rosas al pueblo rankülche

Panghitruz Güor, nacido en 1825 y capturado por el ejército en 1834, fue entregado al General Juan Manuel de Rosas quien lo apadrinó dándole su apellido. En 1840 logró escapar y volvió con su gente. A su muerte, en 1877, fue enterrado en Leubucó donde permaneció hasta que en 1879 su tumba fue profanada por expedicionarios de la Conquista del Desierto y su cráneo fue entregado a un investigador. Durante 123 años permaneció en el Museo de Ciencias Naturales de la Universidad Nacional de La Plata de donde se lo trasladó en julio 2001 al primitivo lugar de entierro. Este acto de restitución, vale la pena resaltarlo, constituye no sólo una reivindicación del pueblo rankülche sino también un interesante precedente para futuros reclamos indígenas sobre su patrimonio histórico-cultural.

Censo Nacional de Población Hogares y Viviendas 2001

En el marco del proceso de realización del censo general de población el Instituto Nacional de Estadísticas y Censos (INDEC), en cumplimiento de una ley nacional, incorporó una pregunta dirigida a detectar hogares con al menos un componente indígena.[1] Para iniciar un trabajo compartido el INDEC decidió consultar a los indígenas sobre la manera de llevar a cabo el trabajo del censo y crear las bases para

632

diseñar y programar la encuesta complementaria 2002. Se realizaron cinco reuniones con representantes de organizaciones y comunidades indígenas. La posición indígena en todas las reuniones fue que no habían tenido participación en la elaboración de la ley y su implementación. A pesar de que el INDEC consultó a varios, la mayoría consideró que el proceso carecía de legitimidad. Por tanto, en la reunión nacional elaboraron un documento[2] y la Comisión de Juristas Indígenas en Argentina (CJIA) presentó un recurso de amparo solicitando la postergación del censo. La Justicia rechazó este recurso y luego de algunas marchas y contramarchas, ajenas a los indígenas, el censo se llevó a cabo con la participación directa en algunas provincias de censistas y capacitadores indígenas. Pese a ese hecho, muchos de ellos niegan su validez, en tanto el INDEC se ha comprometido a no hacer públicos los resultados hasta que se haya completado la segunda etapa.

A modo de síntesis

Las demandas indígenas al INAI se circunscriben esencialmente a dos: 1) la urgente entrega de los títulos de propiedad de sus territorios y 2) la directa participación de los pueblos indígenas en la toma de decisiones de todos los temas que les conciernen.

De no concretarse estas demandas, la falta de defensa jurídica de las comunidades continuará profundizándose. Por un lado el Estado admite su impotencia para evitar la ocupación y usurpación de tierras indígenas por particulares, así como la destrucción de sus recursos naturales avanza sin que exista control estatal. Por otro lado, el mismo Estado alienta una política de inversión de capitales extranjeros y/o nacionales para la instalación en tierras indígenas de emprendimientos productivos de diversa índole. En cuanto a participación, el INAI intentó en 2001 -sin ningún resultado- convocar a delegados indígenas para integrar el Consejo de Pueblos, lo que no pudo concretarse por falta de medios.

Sin presupuesto y sin voluntad política, a estas alturas resulta ya evidente que los gobiernos argentinos se niegan a escuchar las demandas indígenas. Si no se activan los mecanismos políticos requeridos no será posible garantizar a los pueblos indígenas un verdadero reconocimiento de su identidad cultural y el consiguiente respeto por sus derechos especiales. Mientras tanto, con parches y enmascaramientos, los planes y programas de integración continuarán. Y las denuncias y acciones judiciales por violaciones a sus derechos aumentarán.

633

Agravamiento de conflictos por derechos territoriales

Como se dijo más arriba, el retraso en las entregas de los títulos de propiedad agrava cotidianamente la situación de indefensión jurídica y las condiciones de vida de las comunidades indígenas. No es posible aquí enumerar todos estos conflictos. Por eso tomaremos como casos testigo tres de ellos.

Asociación de Comunidades Aborígenes Lhaka Honhat contra Estado Argentino

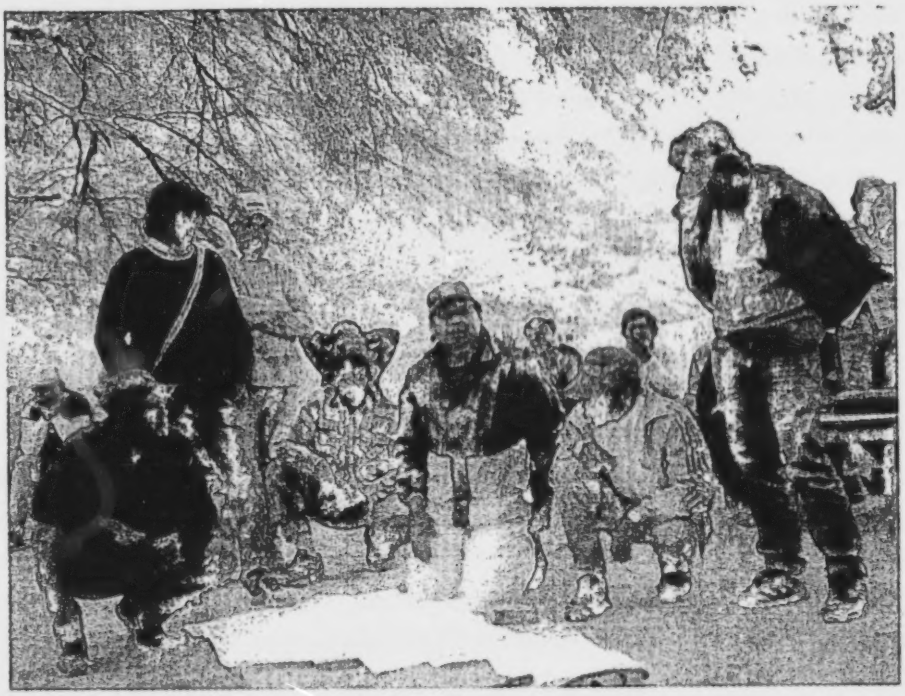
Prosigue la tramitación del caso 12094 ante la Comisión Interamericana de Derechos Humanos. Se trata del reclamo de 35 comunidades de cinco pueblos cazadores-recolectores de un territorio sin divisiones internas de 330.000 has. en la zona del Chaco, en la provincia de Salta. En 2000 se inició un proceso de solución amistosa entre las partes que culminó intempestivamente en 2001 con la negativa del gobierno de la provincia de Salta a reconocer las necesidades espaciales de las comunidades. A espaldas del proceso de solución amistosa, el gobierno continuó con su política de hostigamiento a las comunidades para obligar a sus jefes a quebrar la unidad y aceptar su propuesta tramposa «en forma inmediata [de] una superficie de tierras muy reducida»[3] por comunidad. Mientras se espera una nueva reunión entre las partes con la supervisión de la CIDH, la Asociación ha encarado un estudio de mapeo para definir con precisión las áreas de uso tradicional y demostrar científicamente el fundamento de su reclamo. En tanto, el gobierno salteño autoriza clandestinamente a un equipo de ingenieros a realizar acuerdos apócrifos entre criollos e indígenas empleando mensuras arbitrarias y el gobierno nacional planea construir una carretera en el territorio indígena.

Pueblo Mapuche contra Repsol-YPF

La histórica demanda de las comunidades de Painemil y Kaxipayiñ por la contaminación de sus tierras continúa. El origen del conflicto es el yacimiento de gas de Loma de la Lata, el más grande de América del Sur. En marzo de 2001 se reiteraron las denuncias por contaminación de las napas freáticas y la «apertura descontrolada de picadas, nuevas cañerías y obras» sin previa consulta pese a que se había acordado que toda nueva obra «iba a ser aprobada por las autoridades mapuches a través de la Comisión de Control y Vigilancia».

Sin tomar en cuenta estas demandas, la empresa no reconoció a la comisión. A su vez, el gobierno de la provincia de Neuquén, obligado por un acuerdo judicial a proveer de agua sana a las comunida-

634



El equipo de mapeo mostrando el mapa de la comunidad Lhaka Honhat. Foto: Morita Carrasco

Luego de la explosión del gasoducto. Foto: Greenpeace Argentina

BEST COPY AVAILABLE

des, no lo está cumpliendo. En octubre, durante una manifestación, «niños, mujeres embarazadas y hombres integrantes de las comunidades»[4] fueron reprimidos y los *Lonko* detenidos. En el marco del caso que la Defensoría de Menores de la Provincia de Neuquén tramita ante la CIDH se realizó en noviembre una reunión de trabajo en Washington con la asistencia de las partes. Ante la imposibilidad de llegar a un acuerdo, la CIDH resolvió convocar una nueva reunión y efectuar una visita «*in loco*» para verificar las denuncias.

Comunidad Kolla Tinkunaku contra Seabort Corporation / Gasoducto Norandino

Mientras prosigue el juicio iniciado por la firma Seabort Corporation por revocatoria de la donación efectuada a la comunidad por el Ingenio El Tabacal, las comunidades que integran la organización indígena Tinkunaku (San Andrés, Río Blanquito, Los Naranjos y Angosto de Paraní) se han visto afectadas por dos explosiones del gasoducto Norandino. El ducto, que transporta gas a Chile, fue construido sin el acuerdo de la comunidad en su territorio pese a la acción de amparo promovida en defensa de sus derechos y en salvaguarda de una especie de fauna nativa en peligro de extinción. El gasoducto fue terminado en 1999. Actualmente recorre 70 kilómetros del territorio indígena, muy próximo a donde se encuentran las viviendas. En marzo de 2001 el gasoducto explota atemorizando y causando daños a toda la comunidad de San Andrés y a la selva. En enero de 2002 se repite la explosión, amplificándose sus impactos. Felizmente, en ese momento no había personas en el lugar, sin embargo 4 has de selva quedaron completamente calcinadas y la tierra, por efecto del calor de la explosión, quedó convertida en ladrillos. Si bien el Ente Nacional Regulador del Gas (ENERGAS) tenía conocimiento de la situación, no controló a la empresa y hoy no se sabe qué puede pasar cuando concluya la reparación y se restablezca el suministro.

El movimiento indígena

Es interesante destacar que el movimiento indígena, frente al estado general de las cosas, está produciendo algunas respuestas e iniciativas que bien vale la pena resaltar. Por un lado, el nivel de actuación y participación masiva en las reuniones regionales por el censo revela que existe un crecimiento en la conciencia política a todos los niveles, no sólo de los líderes sino también de los miembros de comunidades. Aunque parece difícil por ahora que se pueda conse-

636

guir una unidad nacional, hay indicios de consolidación de grupos en instancias regionales. Un ejemplo ilustrativo es la constitución de la *Comisión de los Pueblos Indígenas de la Cuenca del Río Pilcomayo* [5](Argentina, Bolivia y Paraguay) y su exigencia de participación en los organismos binacionales y trinacionales vinculados a la cuenca del Pilcomayo para decidir sobre las políticas y proyectos a desarrollar por los estados miembro en dicha cuenca. Otro es el grupo *Autoafirmación* formado por jóvenes mapuches quienes iniciaron un interesante movimiento de recuperación cultural y expandieron su voz a través de una campaña de difusión con motivo del censo[6].

Al mismo tiempo se observa mayor inquietud por profundizar la autocapacitación en lo relativo a sus derechos con una mirada abierta al proceso que se lleva a cabo en arenas internacionales. Así lo demuestran las becas obtenidas por algunos para participar en la Conferencia Mundial contra el Racismo y el programa de Naciones Unidas de formación en derechos humanos. Y la organización de eventos como el *Encuentro Nacional de Dirigentes Indígenas* [7], a cargo del Consejo de Organizaciones Aborígenes de Jujuy, y las *Primeras jornadas de reflexión sobre los derechos de los pueblos indígenas* co-organizadas por la Comisión de Juristas Indígenas en Argentina[8].

Notas y referencias

1 Está previsto completar el estudio con una «Encuesta complementaria 2002» para conocer la cantidad y composición de todos los hogares que figuran en esta primera etapa.

2 El «*Manifiesto de los Pueblos Indígenas de Argentina frente al Censo Nacional 2001*» puede ser consultado en la página www.geocities.com/RainForest/Andes/8976.

3 Carta del Coordinador de la Lhaka Honhat dirigida a la CIDH. Más información puede solicitarse a: desc@cels.org.ar ; rmasociana@arnet.com.ar

4 Comunicado emitido por las dos comunidades. Más información puede solicitarse a wajmapu@neunet.com.ar

5 Más información puede solicitarse a: fungir@ciudad.com.ar

6 Más información puede solicitarse a: auafirmacion@yahoo.com.ar

7 Más información puede solicitarse a: coaj_jujuy@hotmail.com

8 Más información puede solicitarse a: pueblosindigenas@sinectis.com.ar

637

CHILE

La situación actual de los pueblos indígenas en Chile, y de los mapuches en particular, se encuentra en un peligroso y asfixiante estancamiento originado por los escasos avances producidos en el país para procesar sus demandas y llegar a un entendimiento con los principales actores políticos y sociales. Tal situación es fruto de resistencias culturales existentes en distintos sectores de la sociedad nacional así como de la inflexibilidad del sistema político-institucional chileno que impide realizar las reformas necesarias para la satisfacción de las demandas indígenas por tierras y territorios, la búsqueda de su reconocimiento constitucional y la aprobación del Convenio 169 de la OIT.

Por el contrario, las demandas mapuches han sufrido un creciente proceso de criminalización que pretende restarles credibilidad y legitimidad. Desde los sectores más refractarios al movimiento indígena se promueven imágenes sobre supuestas intenciones separatistas y de vínculos, no demostrados hasta ahora, con grupos radicales de izquierda. Esta campaña ha sido promovida por medios de prensa que apoyan a los grupos empresariales en conflicto con los mapuches. Incluso después de los atentados del 11 de septiembre en Nueva York circuló en esta prensa la noticia, infundada, de supuestos vínculos entre organizaciones mapuches y el líder fundamentalista Osama Bin Laden.

Los medios también han intentado concluir que la radicalización del conflicto mapuche está ligada a sus vínculos con el EZLN de México y la ETA del País Vasco. Para los mapuches, esta estrategia de estigmatización sólo busca incentivar una mayor represión policial, así como justificar la violación de sus derechos básicos y legítimas reclamaciones.

Movilizaciones y demandas

Si el año 2000 fue relativamente pasivo en términos de movilizaciones e incidentes derivados del conflicto de las comunidades mapuches con el gobierno y las empresas forestales, el 2001 por el contrario fue de serios enfrentamientos, algunos de los cuales dejaron numerosos detenidos y heridos de gravedad. Así ocurrió en el caso del tiroteo policial contra 4 mapuches en la comuna de Tirúa; y los disparos contra otros dos comuneros en Galvarino y Victoria respectivamente, lo que se suma a diversos allanamientos y detenciones policiales caracterizadas por una inusitada violencia.

638

Entre los hechos más violentos se destaca el allanamiento a la sede del Consejo de Todas las Tierras (el 19 de julio), una de las organizaciones mapuches más influyentes del país junto con la Coordinadora Arauco-Malleco. La diligencia se realizó con un aparatoso operativo policial que produjo la molestia de los dirigentes quienes se opusieron a la acción, produciéndose una violenta reacción policial con saldo de heridos y detenidos, entre ellos el dirigente Aucán Huilcamán, quién unos meses más tarde (el 29 de noviembre) seguía

BEST COPY AVAILABLE

encarcelado y acusado, junto a otras cinco personas, de maltrato a carabineros.

El allanamiento generó una ola de solidaridad sin precedentes entre las organizaciones mapuches, iniciándose la formación de un "frente común" que convocó a una masiva marcha en la ciudad de Temuco (el 25 de julio). Su finalidad era repudiar los hostigamientos y la violencia represiva generada por operativos policiales y judiciales en contra de comunidades y organizaciones que reivindican derechos territoriales. La movilización fue convocada por las principales organizaciones mapuches de la Novena Región y contó con la adhesión de numerosas comunidades mapuches y organizaciones de la sociedad civil, reuniendo a unas 1.500 personas que paralizaron las principales arterias de la ciudad de Temuco. La marcha concluyó con una fuerte represión policial y con graves incidentes en las calles de la ciudad.

En la provincia de Malleco (Región de la Araucanía) continuaron las reivindicaciones territoriales y las protestas de comunidades contra particulares y empresas forestales, lo que condujo a serios enfrentamientos con la policía. Como en los años anteriores, algunos grandes propietarios forestales han hecho demostraciones de fuerza, amenazando con tomar la justicia en sus propias manos si el gobierno no aplica la Ley de Seguridad Interior del Estado.

En Temuco, el cierre de un hogar estudiantil indígena desató una ola de protestas de universitarios mapuches. Los alumnos "tomaron" la catedral y organizaron una huelga de hambre para presionar a las autoridades a alcanzar una pronta solución al problema. Más allá del tema de los hogares, los estudiantes reclaman la implementación de una política estudiantil mapuche. En tanto, en el Alto Bío Bío han continuado las protestas de pewenches y ambientalistas en contra de la represa Ralco de la multinacional ENDESA. Asimismo, comunidades mapuches de Temuco, Purén y Gorbea han intentado, infructuosamente, terminar con los basurales municipales existentes en sus tierras.

La situación general de las demandas mapuches se ha visto perjudicada por la severa crisis que atraviesa la Corporación Nacional de Desarrollo Indígena –CONADI- organismo gubernamental cuya tarea es promover el desarrollo de los pueblos indígenas. La CONADI, disminuida y con escasa capacidad de responder a las demandas indígenas, ha caído en el descrédito, siendo acusada de corrupción y problemas administrativos en la compra de predios para comunidades mapuches, situación que el gobierno investiga.

640

Convenio 169 y reforma del sistema procesal penal

Las demandas jurídicas y el nuevo sistema procesal penal son dos asuntos que preocupan profundamente a los pueblos indígenas de Chile. Entretanto, el Convenio 169 de la OIT sigue sin ser ratificado. Después de más de nueve años de tramitación fue aprobado por la Cámara de Diputados y se encuentra actualmente en el Senado. Debido a reclamaciones de parlamentarios de derecha al Tribunal Constitucional, su aprobación es ahora más difícil pues requiere un 4/7 del Senado para concretarse, porcentaje cdifícil de alcanzar por los sectores a favor de su aprobación.

En el marco de la modernización del poder judicial chileno se ha comenzado a aplicar un nuevo sistema procesal que opera en forma piloto en algunas regiones del país, una de ellas la Región de la Araucanía. Las organizaciones mapuches han cuestionado este sistema por considerarlo discriminatorio y vejatorio. Algunas organizaciones, como la agrupación de profesionales mapuche Konapewman, han planteado la necesidad de readecuar el sistema, incorporando una pluridiversidad jurídica que permita la aceptación y validez de un derecho alternativo basado en el derecho consuetudinario, planteamiento que ha sido rechazado por miembros del poder judicial y políticos de derecha.

Verdad histórica y nuevo trato

En enero de 2001 se constituyó la Comisión de Verdad Histórica y Nuevo Trato (Ver Chile en *El Mundo Indígena 2000-2001*), presidida por el ex presidente de la república Patricio Aylwin y compuesta por intelectuales y dirigentes de todos los pueblos indígenas del país. Su mandato es la revisión del pasado y la elaboración de propuestas para un nuevo trato. Se han constituido dos subcomisiones temáticas de derecho y desarrollo y una subcomisión por cada pueblo. Se estableció un plazo de trabajo de seis meses para la recopilación de antecedentes sobre su historia para la elaboración autónoma de propuestas a la Comisión.

La Comisión sesionó durante el año pero los mapuches no participaron hasta el mes de octubre por tener una serie de reparos y críticas a la iniciativa. Entre las organizaciones que se integraron a la Comisión se encuentran las principales identidades territoriales mapuche. Las organizaciones mapuches automarginadas plantearon la idea de reemplazar la constitución de esta instancia por una «Comisión de Estado» donde estén representados todos los poderes públicos y que además, sea integrada por un garante internacional, para asegurar la viabilidad y capacidad resolutiva de su funcionamiento.

641

Pobreza y proyectos de desarrollo

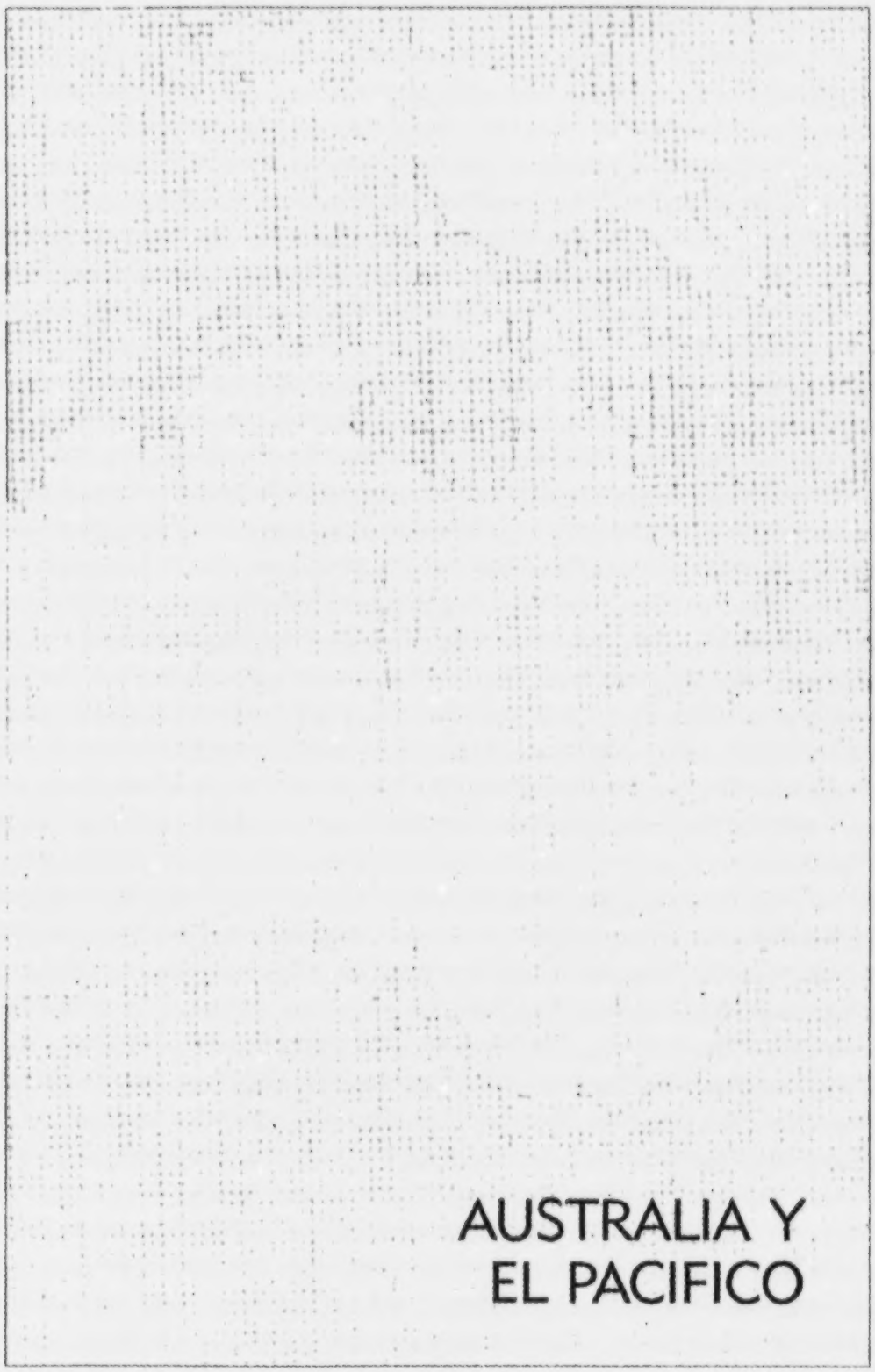
En el mes de julio se dieron a conocer los resultados de la Encuesta de Caracterización Socioeconómica Nacional (CASEN), que reveló -una vez más- las condiciones de extrema pobreza en que vive la población indígena rural. La encuesta demostró que la Novena Región, en la que existe la mayor concentración de población mapuche rural del país, es la más pobre del país con un 32,7% de pobres. Las cifras de pobreza muestran un estancamiento y aún un empeoramiento de la situación económica de la población mapuche rural ya que legan al 50% en varias de las comunas con más población mapuche. En la Primera Región, donde reside el mayor porcentaje de población aymara del país, la pobreza ha aumentado en casi cuatro puntos respecto al año 1998. Para los dirigentes indígenas, los resultados de la encuesta, que mide niveles de educación, empleo, ingresos, salud y vivienda, evidencian el fracaso de las políticas sociales de gobierno, impuestas con escasos o nulos criterios de participación y respeto a las especificidades culturales de los pueblos indígenas.

Con el fin de disminuir la pobreza indígena, el gobierno del Presidente Lagos gestionó un crédito con el Banco Interamericano de Desarrollo, BID. El crédito, aprobado el 28 de febrero del 2001, financiará el denominado *Programa de Desarrollo Integral de Comunidades Indígenas*, con una línea de crédito de 80 millones de dólares que pretende beneficiar a unas 12.000 familias indígenas de 600 comunidades aymaras, atacameñas y mapuches. Entre sus objetivos está el fortalecimiento de las instituciones locales, el aumento de la producción agrícola y el mejoramiento de los servicios de educación y salud. Aunque la iniciativa ha sido bien recibida en general, algunas organizaciones mapuches han criticado la escasez de instancias de participación con que cuentan las comunidades para definir sus propias prioridades y estrategias.

Fuentes

Diario *La Tercera*
Diario *El Mercurio*
Diario *El Austral de Temuco*
www.mapuche.cl
www.mapuexpress.net
www.mapuche.nl
www.mideplan.cl
www.iadb.org

642



AUSTRALIA Y EL PACIFICO

BEST COPY AVAILABLE

643

AUSTRALIA

La política y mundos políticos de los aborígenes e isleños del Estrecho Torres fueron destrozados a mediados de junio de 2001. Geoff Clark, electo como cabeza de la administración nacional aborigen, fue acusado en intensos informes de prensa por haber estado implicado en cuatro violaciones a mujeres hace 20 años. Luego, una famosa magistrada aborigen, la Sra. Pat O'Shane comentó que muchas mujeres inventan historias de violación. Más tarde la ex jefa de la Reconciliación Aborigen, Evelyn Scott, dijo que sus hijos habían sido abusados por un político aborigen, y poco después se dijo que era el hermano de O'Shane. A continuación vino el escándalo.

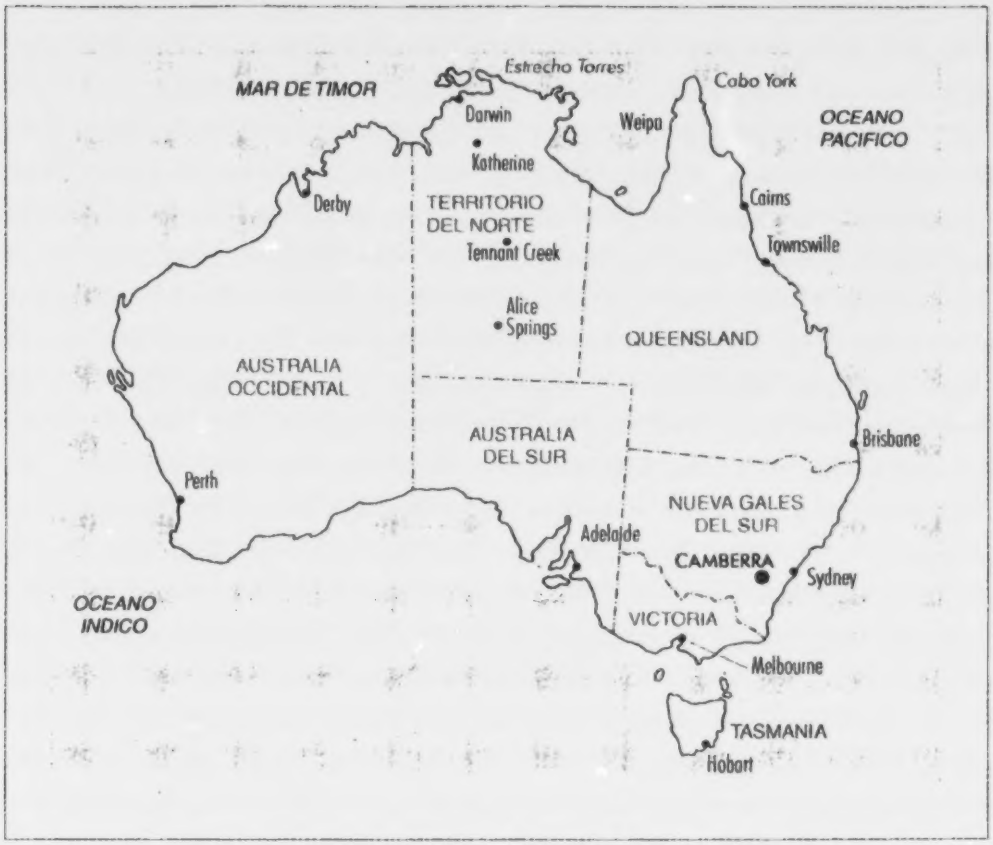
Escándalo, hipocresía y negación

Los blancos, incluyendo los políticos, los redactores de periódicos y comentaristas fingieron sorpresa y horror ante las espantosas historias informadas ahora en prolongados artículos y programas televisivos en todo el país. *Fingieron* porque durante muchos años han estado apareciendo libros, artículos, informes orales y visuales sobre la verdadera Australia aborigen. Aún peor, los aborígenes y sus amigos no-indígenas y simpatizantes fueron acusados de haber "ocultado" esta información desagradable.

La *extensión* y la *aceptación* de la violencia contra mujeres y niños dentro de la sociedad aborigen se convirtieron en los temas claves. Los leones de la opinión pública blanca denunciaron a los aborígenes –especialmente a los líderes- y sus amigos blancos por "aceptar" o ignorar supuestamente la miseria de comunidades y familias. Los editoriales, comentaristas, las personas que llamaban a los programas radiales e invitados exigieron que los aborígenes actuaran inmediatamente y dejaran de hablar –dejen de hacernos perder el tiempo con propuestas para reformas políticas, constitucionales y económicas- y se ocuparan de resolver sus propios problemas. No queremos oír de historia, pobreza, sufrimiento y falta de financiamiento, gritaron; ¡es tiempo que los negros hagan algo!

En la confusión de mediados de junio se hizo imposible hablar de cualquier tema indígena que no fuera abuso físico y sexual de mujeres y niños. El interés en otros temas hacían que uno fuera calificado como superficial o tonto, mientras que ninguna medida –por ejemplo, encerrar a hombres negros en jaulas de alambre para alejarlos de su familia- era demasiado extrema para ser propuesta por gente generalmente sensata. Al igual que con lo ocurrido el 11 de septiembre de

644



2001, uno debe expresar primero indignación para demostrar su seriedad moral y su corrección política.

El exceso de estridencia es claro. Seguramente las reacciones blancas no serían tan extremas, tan oportunistas, tan *agradecidas*, si no permitieran a los australianos la oportunidad de expresarse a sí mismos vehementemente sobre estos temas – sin costo moral o material. Otras personas, no nosotros, ¡son culpables de nuestro peor y más vergonzoso problema nacional! Somos tan buenos y estamos tan preocupados que ahora nos podemos mostrar abiertamente alterados por este problema; regocijados en historias sensacionalistas de periódicos semanales, crónicas y fotos, una pornografía de violencia; *y* pasar por alto el papel de nuestra política de asentamiento, tierra y financiación que ha creado todo este problema.

Rincón nordeste

El más completo y doloroso análisis sobre la violencia comunitaria indígena en años recientes fue el trabajo de la Profesora Boni Robertson y otras mujeres indígenas, *Equipo de Tareas de las Mujeres Aborige-*

BEST COPY AVAILABLE

nes e Isleñas del Estrecho Torres sobre la Violencia, 1999, patrocinado por el gobierno del estado de Queensland[1]. (Sin embargo, el informe no recibió la urgencia oficial necesaria por lo que los periodistas del Brisbane Courier-Mail, Margaret Wenham, Tony Koch y otros continuaron con sus burdos informes de prensa. El Primer Ministro dijo que estaba conmovido y lanzó otra investigación en 2001, encabezada por un respetado hombre blanco, pero con un tiempo de trabajo limitado y una concentración regional en la Península de Cape York, el gran punto nordeste de Australia. El *Estudio de Cape York* del Juez Tony Fitzgerald está ahora en Internet[2].

Cape York es ya el centro de un esfuerzo especial del departamento del Primer Ministro de Queensland, las *Asociaciones de Cape York*, una especie de mezcla pragmática anti-ideológica de buenas intenciones y cooperación práctica entre los departamentos gubernamentales llevada adelante por el impulso y prestigio personal del Primer Ministro, y por grupos locales de las turbulentas comunidades de la región, lideradas por Noel Pearson, un líder aborigen de alto perfil. El mismo Pearson condujo un debate nacional a través de una serie de fuertes discursos públicos, removiendo las animosidades partidarias por sus ataques a viejos *confrères* laboristas, un enfoque que llevó a muchos a dudar de su prudencia. Sin embargo, en su presentación más completa y reciente, *Sobre el derecho humano a la miseria, la encarcelación masiva y la muerte prematura* (25.10.2001), Pearson estableció firmemente y de manera accesible las necesidades prácticas y la urgencia de su enfoque[3].

El 13 de agosto de 2001 tuvo lugar un tranquilo momento público en este año de vergüenza y dolor por la violencia, cuando Noel Pearson y el premier inuit de Nunavut, Paul Okalik compartieron un almuerzo en el Brisbane Custom House y se expresaron ante una atenta audiencia sobre el progreso en sus regiones[4]. Había muchos funcionarios gubernamentales en la audiencia. El suave carisma de Okalik provocó muchos comentarios en Australia, donde los decibeles habían sido lo más característico de los recientes debates sobre asuntos indígenas. Subrayó que los hitos políticos en la política indígena eran, después de todo, sólo aperturas prácticas para una modesta resolución de problemas y auténticas reconciliaciones humanas. El 15 de agosto, cuando Okalik habló en Canberra en el Club Nacional de Prensa, un evento televisado a nivel nacional, con el anciano hombre de estado aborigen de Australia y líder de la fuerza moral para la Reconciliación, Patrick Dodson, este último relacionó el caso inuit de Nunavut con las necesidades aborígenes en el centenario de la Federación de Australia (es decir, 2001).

[L]as opciones políticas de los gobiernos durante los pasados 200 años, y especialmente a partir de la Federación, nos han mantenido como ...

646

juguetes [...] En este momento somos un poco como juguetes que han sido descartados pero todavía no han sido arrojados a la basura.

Debido a estas incertidumbres, y la inseguridad de nuestras vidas y nuestro futuro bajo el control del gobierno, hemos vuelto a despertar el llamado para lograr un tratado entre el gobierno y nosotros.

Como nación, tenemos que encontrar el valor para enfrentar esa perspectiva y no creo que sea tan atemorizante. Cuando trato con abogados, hombres de negocios, aborígenes y otros de la sociedad, a menudo implica contratos.

Es necesario un tratado para...

Reconocer a los pueblos aborígenes como pueblos con derechos al mismo nivel de servicio que se espera para otros, pero también con nuestros derechos a ser indígenas y manejar nuestras propias sociedades en nuestras propias tierras, a nuestro propio ritmo y de nuestra propia forma.

...Pero finalmente, un tratado representaría una "reconciliación práctica" verdadera...

Llegará el momento cuando comprendamos que las únicas alternativas son el temor, el racismo, la ignorancia y la continua desintegración social[5].

La "reconciliación práctica" es la frase del gobierno de Howard para el goteo de programas estatales de bienestar social, su sustituto para enfrentar la agenda de los líderes aborígenes.

Los isleños del Estrecho Torres

En la punta del Cabo York, el segundo pueblo indígena de Australia, los isleños melanesios de las islas y las costas del Estrecho Torres han seguido procurando el reconocimiento de una autonomía regional y de derechos marinos dentro de Australia. Su última propuesta política, *Un gobierno del territorio del Estrecho Torres*, que resultó de amplias consultas comunitarias, fue publicada en octubre de 2001[6]. Quieren un gobierno para todos los residentes de la región, independientemente de sus antecedentes étnicos, que encaje en la estructura constitucional australiana. Las propuestas son moderadas y factibles.

Sin embargo, no ponen mucho énfasis en el tema más importante para los isleños, los derechos marinos y el poder de manejar lo que

647

sucede en los mares de su región con sus peligrosos arrecifes y ricas zonas de pesca. En 2001 los isleños ganaron un sensacional caso ante la corte en el cual se les permitió confiscar la pesca de pescadores no-indígenas, un caso ampliamente confundido por otorgar más derechos a los aborígenes que los que en realidad otorga. El peligro para los gobiernos es que algún día, en una crisis, ya sea la aprobación de un proyecto o un accidente contaminante, los isleños se darán cuenta de que a pesar de las recientes entregas ceremoniales de títulos nativos, tienen pocos derechos. Entonces su supuesta "moderación" comparada con la de los aborígenes se evaporará.

Autodeterminación en lo interno y en lo externo

El gobierno de Howard y algunos comentaristas de derechos han culpado a la *autodeterminación* por los problemas y violencia sufrida por los aborígenes. Ese término, conjurado con el *separatismo* en esas mentes, fue usado en forma demasiado optimista por gobiernos anteriores para dignificar sus objetivos con respecto a la política indígena, objetivos casi nunca alcanzados. También se oponen a la autodeterminación y su espíritu en las Naciones Unidas. Por ejemplo, al final de la cumbre mundial sobre racismo WCAR, en septiembre de 2001, el representante gubernamental australiano habló de los beneficios del colonialismo.

Otra opinión divisoria *dentro* de la discusión sobre la autodeterminación se hizo evidente en la conferencia *Rethinking Indigenous Self-Determination* (Reconsiderando la autodeterminación indígena) en la Universidad de Queensland en septiembre de 2001[7]. Para algunos los temas claves son las relaciones políticas y constitucionales, mientras que otros tratan de convertir las relaciones programáticas gubernamentales en algo similar al autogobierno. Ninguno de estos dos enfoques es factible sin el otro, se debe tratar ambos marcos y necesidades cotidianas. El énfasis de hoy en enfoques parciales, a pesar de ser comprensibles en el actual clima australiano, corren el riesgo de convertirse en una forma de micro-administración oficial y continuo control obsesivo de los pueblos indígenas.

La recientemente cancelada reunión de los mandatarios de la Mancomunidad de Naciones (ex Imperio Británico), CHOGM, de octubre de 2001, tendrá lugar en marzo de 2002. Mientras que el plan original incluía muchos eventos públicos y mucho ámbito para el aporte local e internacional en lo cultural, social y político, Howard está claramente complacido con el nuevo enfoque escondido de la observación pública (en nombre de la seguridad desde el 11 de septiembre, por supuesto), en un balneario al norte de Brisbane. Des-

648

El Primer Ministro Howard visitando a Kofi Annan en Nueva York. "Dónde **ESTÁ** el Gran Campeón de los derechos humanos?" Leahy in *Courrier Mail*, Brisbane 5.09.2000

dichadamente, la nueva Asociación de Pueblos Indígenas en la Mancomunidad (CAIP) ha sido incapaz de organizarse a tiempo para contribuir en forma significativa. Sin embargo, la energía moral de la Honorable Margaret Reynolds, senadora australiana retirada, ministra, ocacionalmente académica y quien ahora es punta de lanza de gran parte de los trabajos de derechos humanos de la Mancomunidad, y Helena Whall, que administra los *Derechos Indígenas en el Proyecto de la Mancomunidad*, en la Universidad de Londres,[8] han visto claras propuestas para esta reunión. La Mancomunidad es una de las pocas organizaciones internacionales que no ha adoptado un compromiso con los temas indígenas, pero dado que está integrada por 54 países miembros que incluyen muchos de los mejores y peores contextos indígenas, es un excelente ámbito para sentar precedentes activos.

Huérfano del Pacífico

El 5 de febrero de 2002, los noticieros televisivos australianos, presentaron la reunión del ministro de relaciones exteriores Downer, y la Alta Comisionada de las Naciones Unidas para los Derechos Huma-

BEST COPY AVAILABLE

nos, Mary Robinson. Downer dijo que le comunicó a la Sra. Robinson que la dura política australiana contra los refugiados de los "barcos" estaba fuertemente apoyada por el público australiano. La Sra. Robinson fue entonces mostrada con una triste y gentil sonrisa y dijo que los derechos humanos no eran un asunto de "popularidad". Downer, frecuentemente retratado por caricaturistas políticos, esos mordaces y astutos cronistas de la vida nacional australiana, como un escolar demasiado grande y no muy inteligente, ahora se parecía aún más a la caracterización comparado con Robinson como la gentil pero firme maestra escolar. Fue una imagen de la situación australiana de hoy.

Nada que decir ni argumentar, sino sólo prejuicio para incitar, Howard queda simplemente abusando de Mary Robinson como en el anterior caso Downer (Transcripción de una entrevista radial, Centro de Medios de Difusión del Primer Ministro, 6.2.2002), o cualquier otra persona que no está de acuerdo con él. Desde comienzos del 2000 (ver *El Mundo Indígena 1999-2000* y *2000-2001*) Howard se ha opuesto abiertamente a los procesos y normas internacionales de derechos humanos, advirtiendo incluso al Presidente de la ONU, Kofi Annan, que no hablara sobre estos temas en Australia y que se trataba de tácticas partidarias internas. La visita de Howard a la ONU en 2000 permitió a los caricaturistas ridiculizar su enfoque agresivamente infantil (ver dibujo). Pero los campamentos de refugiados donde los solicitantes de asilo son detenidos durante largos períodos, y el uso de Howard de "fuerzas especiales" militares para asaltar al barco *Tampa* en el mar en agosto de 2001, su intimidación gubernamental al capitán y los intentos de echar por la borda el espíritu del derecho internacional y de humanidad elemental, su negativa a dejar desembarcar a los refugiados de los botes y su "Solución Pacífica" de comprar espacio para campamentos de prisioneros en mini-naciones pobres como Nauru, ahora se han convertido en un escándalo internacional. A Howard le agrada la confusión, y se posiciona como defensor de los prejuicios australianos contra las "elites" nacionales y extranjeras. Es la característica central de su política[9]. Sin embargo, la estrategia inteligente de usar a los aborígenes o los afganos todavía constituye racismo oficial y ese es el problema de la era y el gobierno de Howard. Ha abandonado la comunidad moral del "primer mundo".

A Howard le importan muy poco los acuerdos internacionales que Australia adhirió voluntariamente, aunque admite libremente usar aquellos que le sirven. Los dictados de conciencia o los efectos embrutecedores sobre la sociedad nacional de actos brutales de omisión o comisión hacia "el Otro" no impresionan. En cambio, la gente desesperada flotando en botes abarrotados y con muchos ahogados en las aguas del norte de Australia, los aborígenes y otras minorías sirven sólo al populismo del momento y a las *idées fixes* de Howard.

650

Mientras tanto, Howard rechaza las nociones de comunidad internacional y obligaciones aparte de los macro-efectos globales económicos y militares, y ahora está tratando de simplificar acercando a Australia a Estados Unidos a través del libre comercio y el pleno apoyo a las guerras y las políticas extranjeras de Bush (incluyendo el rechazo de los acuerdos de Kioto).

Conclusiones

Ahora, a mediados de febrero de 2002, se ven las consecuencias. Varias fuentes y un informe oficial revelaron que el gobierno de Howard sabía hace un mes o más durante las campañas electorales que sus horribles discursos sobre los refugiados de los barcos que tiraban a los niños fuera de borda no eran ciertos, mientras que abusaba del personal militar y civil y los poderes para manipular los asuntos políticos y electorales (todos los medios de difusión, 12-15.2.2002). El escepticismo del público es grande porque destrozar la imagen y derechos de personas vulnerables debido a un autoengrandecimiento ¡es una actitud tan propia de John Howard! Y éste respondió a su manera. (1) Culpó a un ministro anterior, y su gobierno está culpando a los subordinados, al mismo tiempo que prohibe a los funcionarios de defensa hacer comentarios. (2) Dijo que era un tema inexistente, que lo único que había eran los lloriqueos de los laboristas sobre la elección de 2001 que perdieron. (3) Y en su estilo orgulloso proclamó pomposamente "yo no me disculpo por nada que fue hecho por el interés nacional". Posteriormente, en otra oportunida de conmoción nacional, Howard le dijo al país que los intentos por conocer la verdad están "motivados políticamente", una inoportuna sensibilidad de un hombre que reduce casi todo a lloriqueos partidarios. El verdadero tema es la credibilidad, la integridad y la capacidad de gobierno de los líderes.

Como lo resume Mike Carlton

> *Lo que es realmente claro ...es que altos ministros –y el más culpable es el Primer Ministro- no buscaron la verdad del asunto porque la mentira se acomodaba muy bien a sus propósitos políticos, gracias. Estaban comprometidos en una de las peores estratagemas de gobierno autoritario, que es apuntalar la autoridad de vilipendiar a una minoría racial o grupo religioso e inflamar al populacho contra el mismo. En una sociedad multicultural como la nuestra, esto es casi una irresponsabilidad criminal*[10].

Los motivos y declaraciones oficiales del gobierno de Howard sobre derechos humanos, pueblos indígenas y buscadores de asilo no son

651

creíbles, ni en Australia ni en el exterior. Existe una total falta o rechazo de imaginación y empatía y de solidaridad moral, con los semejantes. Dado el comportamiento reciente de Howard y sus ministros, uno se puede imaginar muy bien cómo *actuarían* si fueran encerrados juntos en el desierto durante algunos meses, o enlatados como sardinas en un buque que hace agua a la deriva en el Océano Índico.

Notas y referencias

1 Informe en línea:
http://www.qldwoman.qld.gov.au/publications/main.html.
2 Informe en línea:
http://www.premiers.qld.gov.au/about/community/capeyorkreport.htm
3 Informe en línea:
http://www.capeyorkpartnerships.com/noelpearson/index.htm
4 Informe en línea:
http://www.brisinst.org.au/papers/okalik_paul_dialogue/
5 *The Age*, Melbourne, 16.8.01
6 Informe en línea: (http://www.tsra.gov.au/4001.pdf
7 Las actas serán publicadas por los organizadores de la conferencia y el editor, Geoff Stokes, Universidad de Deakin.
8 Sitio web: http://www.cpsu.org.uk/projects/indigenous.html
9 Ver e.g. **David Solomon. 2002** . "Media Manipulation" en *Howard's Race*, David Solomon (ed.) 2002.
10 *Sydney Morning Herald*, 16.2.2002

LA REGION DEL PACIFICO

Area de Libre Comercio del Pacífico: controversia sobre PACER y PICTA

En agosto de 2001, el Foro de las Islas del Pacífico (antes conocido como el Foro del Pacífico Sur) aprobó y abrió para su firma y ratificación, el Acuerdo de Comercio de las Islas del Pacífico (PICTA) y el Acuerdo del Pacífico sobre Relaciones Económicas Más Estrechas (PACER).

PACER es un acuerdo de cooperación económica entre todos los miembros del Foro que establece la visión del Foro de la región sobre el comercio futuro y las relaciones económicas, mientras que PICTA,

652

excluyendo Australia y Nueva Zelanda, establece un área de libre comercio entre los otros 14 países isleños del Foro después de un período de transición de 10 años.

Aunque el Foro aclamó estos acuerdos porque proveían la base para una creciente integración regional y un medio de preparar efectivamente las economías de los miembros para responder a la globalización, la Red de ONGs del Pacífico sobre la Globalización (PANG) considera ambos acuerdos simplemente como los primeros escalones hacia el cumplimiento pleno con la Organización Mundial del Comercio (OMC). Aunque requieren ratificación por una mayoría de los países miembros para ser efectivos, PICTA y PACER pueden entrar en vigencia ya en septiembre de 2002 cuando la Unión Europea (UE) comienza las negociaciones sobre libre comercio con los Estados del Pacífico conforme al Acuerdo Cotonou.

La UE ha indicado que buscará diferir otros cinco años su comercio preferencial con los países africanos, caribeños y del Pacífico (ACP) hasta 2006, pero después tiene la intención de implementar un régimen de comercio que esté conforme con las reglas de la OMC. Por lo tanto, comunicó a los países de ACP que quiere crear un área de libre comercio con cada una de las tres sub-regiones. La UE está facilitando la implementación del área de libre comercio del Pacífico, proporcionando asistencia técnica para las reformas en los respectivos países del Foro, y financiando tres expertos del Secretariado del Foro, un asesor sobre Política Comercial, un Oficial para el Desarrollo del Comercio y un Oficial para Reformas Fiscales. Estos acuerdos legalmente obligatorios tendrán como resultado que los estados isleños del Pacífico estén en conformidad con las reglas de comercio de la OMC, abriendo gradualmente sus economías al libre comercio.

El Foro reconoció que pueden surgir algunos efectos sociales adversos, pero alega que el impacto "se espera que sea pequeño" y temporario. Pero la sociedad civil del Pacífico y los observadores no están convencidos con la perspectiva del Foro de los efectos sociales potenciales en base a la observación de las experiencias e impactos de la liberalización y las áreas de libre comercio en otras regiones del mundo. La comunidad de organizaciones no-gubernamentales y los grupos de iglesias han expresado preocupación por la manera no-transparente en que se han conducido las discusiones sobre un área de libre comercio.

PANG está particularmente preocupada sobre el impacto del libre comercio sobre la propiedad y el acceso a la tierra. El sistema de tierras de propiedad comunal de la región del Pacífico entra en conflicto directo con la visión de que los recursos deberían ser usados por aquellos que pueden hacer un uso más productivo y rentable, y que todos deberían tener un acceso igual a los recursos del mundo.

653

En respuesta al Foro, PANG expresó preocupaciones sobre el impacto del libre comercio en comunidades de islas pequeñas e hizo un llamado a los gobiernos del Pacífico a:

- No ratificar PICTA y PACER
- Retirarse de los acuerdos si ya están ratificados,
- Referir decisiones sobre PICTA y PACER a los parlamentos nacionales y alentar el debate público.

El Pacífico enfrenta olas de solicitantes de asilo

En el Pacífico, Aotearoa/Nueva Zelanda, Fiji, Samoa, las Islas Salomón, Tuvalu y Papúa Nueva Guinea son signatarios del Convenio de Refugiados de 1951 (aunque Papúa Nueva Guinea ha dejado constancia de observaciones a ciertos artículos del Convenio). La firma de Francia, los Estados Unidos y el Reino Unido cubren sus colonias de la región. Nauru no ha firmado el Convenio aunque el gobierno de Nauru aceptó establecer un campamento para refugiados que buscan asilo en Australia.

Comparado con Africa, Asia y el Medio Oriente, hay relativamente pocos refugiados en las islas del Pacífico. Pero es un creciente problema para la región porque los refugiados huyen de los conflictos a los países vecinos (p. ej., de Papúa Occidental a Papúa Nueva Guinea; de Bougainville a las Islas Salomón, de Timor Lorosa'e a Timor Occidental). Miles de personas han sido desplazadas internamente dentro de los mismos países, (p. ej., en Bougainville, Islas Salomón y Fiji).

Sin embargo, Australia ha restringido los derechos de los refugiados de países vecinos. Con la excepción de un puñado de papúes occidentales que han logrado la protección y la residencia permanente, los sucesivos gobiernos australianos se han negado a considerar solicitudes de habitantes de Papúa Occidental que buscan refugio en Australia.

Los pueblos del Pacífico rechazan la "Solución Pacífica" australiana

Los pueblos del Pacífico, incluyendo Jefes, líderes religiosos y ONG se han opuesto enérgicamente a los planes de Australia de usar las islas del Pacífico como "centros de procesamiento" para intentar dificultar el flujo de solicitantes de asilo que se dirigen a las costas australianas. La crisis actual, que comenzó con el incidente de Tampa en agosto de 2001, escaló cuando 224 solicitantes de asilo del barco indonesio *Aceng* desafiaron al gobierno australiano durante dos semanas, rehusando a ser trasladados del barco de guerra australiano

654

HMAS Manoora a un centro de detención en Nauru, construido por los australianos. La situación sin salida fue resuelta cuando el gobierno australiano usó la fuerza para trasladar a 12 líderes iraquíes, a pesar de las declaraciones del gobierno de Nauru que sólo aceptaría refugiados que llegaran voluntariamente. Se impidió el acceso de los medios de difusión a los solicitantes de asilo, imposibilitando obtener relatos de la gente sobre si abandonaron la nave voluntariamente.

Además de pagar por los costos de establecer campamentos en Nauru, Australia ofreció $20 millones al gobierno de Nauru. Aunque reconocen la responsabilidad de Australia de suministrar asistencia para el desarrollo a países isleños vecinos, muchas personas consideran este dinero como un soborno, en vez de una política considerada de ayuda para prioridades de desarrollo a largo plazo. Para los pueblos del Pacífico, la llamada "Solución Pacífica" de Australia es simplemente otra forma de usar al Pacífico como campo de desechos y al mismo tiempo evadir sus obligaciones con respecto al derecho internacional.

En enero de 2001, más de 1.500 solicitantes de asilo estaban ubicados en campamentos de detención en Nauru y Papúa Nueva Guinea (PNG). Pero el tema de los refugiados está creando tensión e incertidumbre. En PNG, el Primer Ministro expulsó a su Ministro de Relaciones Exteriores después de que rechazó la solicitud australiana de aceptar más refugiados "basado en la creencia de que Australia tiene la capacidad y recursos para tratar este problema por sí misma". Un jefe aldeano local de la provincia de Manus, donde fueron llevados los refugiados, dijo que el problema de los refugiados estaba ejerciendo presión sobre el gobierno provincial y creando animosidad entre el pueblo.

En Fiji, cuando el gobierno estableció un equipo especial en octubre para estudiar la cuestión, recibió una severa crítica de los jefes y consejos provinciales. Aunque la Comisión de Derechos Humanos de Fiji declaró que los países del Pacífico como Fiji, tienen la obligación de ocuparse de los refugiados que lleguen a sus territorios, muchos grupos no-gubernamentales opinaron que debido a la situación comparativamente superior de Australia en lo financiero y económico y mayor extensión de tierra, no tenía necesidad de explotar a sus vecinos del Pacífico como centros de procesamiento para refugiados.

Está entendido que muchos gobiernos del Pacífico están tratando de ganar dinero a partir de la situación de los refugiados, y Australia está vinculando el tema de los refugiados con acuerdos de ayuda y beneficios, e incentivos financieros. Muchos gobiernos del Pacífico han recibido o están recibiendo a los refugiados sin amplias consultas nacionales sobre el tema.

Una declaración conjunta de la Conferencia de Iglesias del Pacífico y organizaciones regionales y no-gubernamentales exhortó a los

gobiernos del Pacífico que consideraran cuidadosamente las consecuencias a largo plazo y los impactos de aceptar negocios de ayuda en conexión con los refugiados. Para las organizaciones de la sociedad civil, aceptar refugiados dirigidos a Australia por dinero sólo agregará más problemas y tendrá impactos negativos en las comunidades del Pacífico, así como sobre la soberanía de las naciones del Pacífico. La declaración agrega además que aceptar tratos de ayuda "convertirá a los gobiernos de las islas del Pacífico en parte del proceso que induce a obtener dinero/beneficios a partir del comercio del tráfico humano, y en este caso de solicitantes de asilo".

Diez usos que tiene el mundo para una isla del Pacífico

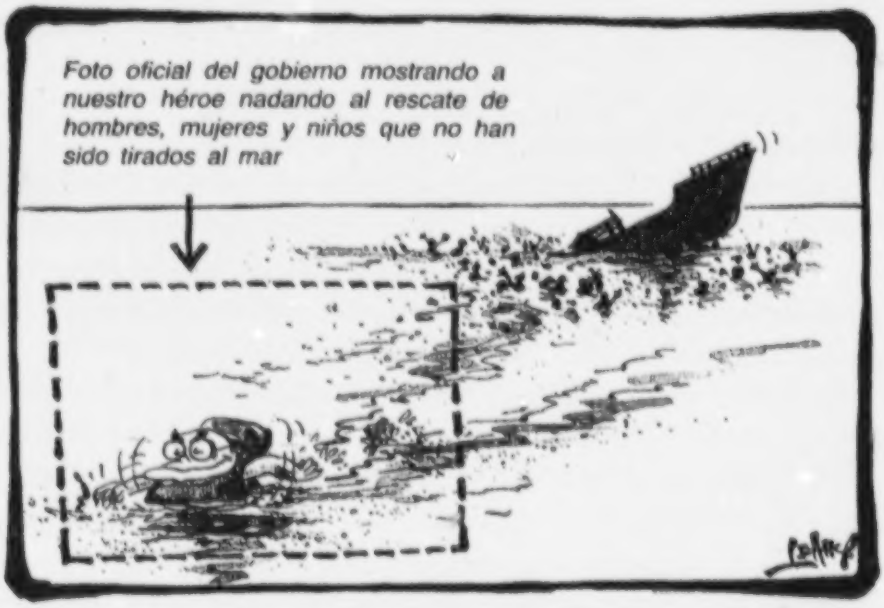
1. Un campo de prueba para bombas atómicas y de hidrógeno – ¡¡bravo!!
2. Un objetivo para misiles balísticos y cabezas de armas nucleares.
3. Un lugar de esparcimiento para el personal militar.
4. Un incinerador para armas químicas no utilizadas.
5. Un depósito para desechos tóxicos y radioactivos
6. Un ghetto para poner a las personas cuyas aldeas molestan para los puntos 1-5.
7. Como modelo de medio ambiente hermoso y prístino ... y una colonia paradisíaca lejos de casa.
8. Alguien a quien intimidar cuando uno es demasiado pequeño para intimidar a cualquier otro.
9. Un lugar donde vender sus alimentos cuando está vencida la fecha de caducidad.

   Y como último anuncio ...
10. Un centro para procesar (léase "deponer") refugiados para evitar las responsabilidades internacionales y tratar de ganar las elecciones.

Derechos de Propiedad Intelectual: para una mejor protección

La protección de los derechos de propiedad intelectual ha estado en la agenda de los gobiernos del Pacífico durante décadas. Pero recién hace muy poco el Foro de las Islas del Pacífico asumió la tarea de desarrollar un marco legal regional comprehensivo para la promoción y protección del conocimiento tradicional y las expresiones culturales.

656



El Primer Ministro y el barco de refugiados: Leahy en *Courier Mail,* Brisbane 18.02.2002

En junio de 2001 el Foro de Ministros Económicos discutió un modelo de ley para derechos de propiedad intelectual que comprendería derechos culturales y bio-piratería. La ley modelo y un modelo de marco político, una vez aprobados, serían pasados a los países del Pacífico en los próximos años y serían ajustados a las diferentes circunstancias de los países para ser promulgados.

Sin embargo, mientras que la Región del Pacífico aguarda una legislación apropiada y aplicable para proteger sus derechos de propiedad intelectual, la realidad ha forzado particularmente a los gobiernos a comenzar a tomar medidas de protección y de reparto de beneficios entre los bio-prospectores y las comunidades custodias del conocimiento indígena.

Pero finalmente, la ausencia de una adecuada protección legal de la propiedad intelectual en el ámbito nacional y regional hace a las naciones del Pacífico más vulnerables a la bio-piratería internacional.

El ejemplo de Samoa

Samoa firmó un "acuerdo histórico" con un grupo de investigadores de los EE.UU. que garantiza el 20 por ciento de los ingresos recibidos del desarrollo de un compuesto experimental pero prometedor anti-HIV/SIDA de la corteza del árbol samoano "*mamala*".

El compuesto experimental es llamado Prostratin. El grupo de investigación AIDS ReSearch Alliance of America (ARA) (Alianza

BEST COPY AVAILABLE

para la Investigación sobre el SIDA de América), ha anunciado que el acuerdo retornará el 20 por ciento de cualquier ingreso comercial derivado del uso de este compuesto a las personas de Samoa que ayudaron a los investigadores americanos a descubrir la terapia derivada de la planta potencialmente salvadora de vidas. ARA dijo que el acuerdo provee una parte en los beneficios potenciales del primer compuesto licenciado por el Instituto Nacional del Cáncer (NCI) de los Institutos Nacionales de Salud de los EE.UU. (NIH) para el desarrollo por parte de una institución de investigación sin fines de lucro.

Firmado en septiembre de 2001 por el ARA y el Primer Ministro de Samoa Tuilepa Asílele Malielegaoi, el acuerdo da al gobierno de Samoa el 12,5 por ciento de los beneficios. Otro 6,7 por ciento va a la aldea de Savai'i, cerca del Bosque Tropical Falealupo, donde los curanderos proveyeron la información inicial de salud que eventualmente condujo a este acuerdo. La Associated Press dijo que las familias de dos mujeres samoanas, quienes murieron a los 80 años después de pasar su conocimiento sobre los poderes curativos del árbol, recibirán un 0,4 por ciento cada una. NHI también recibe el 5 por ciento de todos los beneficios.

Al otorgar licencia para el desarrollo del compuesto, NCI requirió que hubiera una negociación con el gobierno samoano con respecto a un beneficio para el pueblo de Samoa. ARA, un grupo sin fines de lucro con sede en West Hollywood, California, licenció Prostratin del NCI para examinar la capacidad del compuesto para proteger células contra el HIV y para desactivar un virus que está latente en el cuerpo y más allá del alcance de las actuales medicinas disponibles contra el HIV.

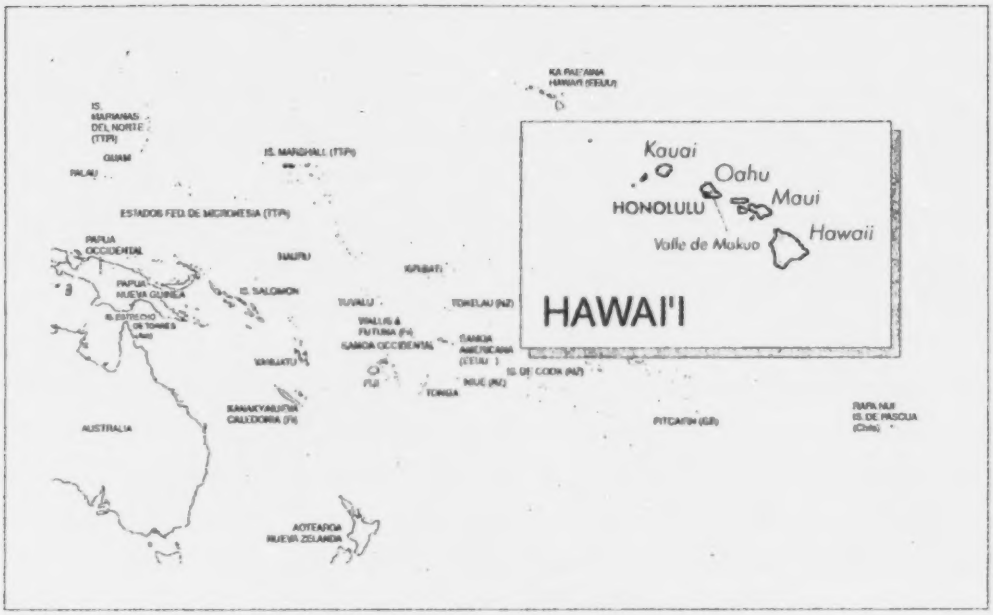
Después de pagar conforme al acuerdo, ARA usará las ganancias derivadas de Prostratin para una investigación adicional sobre el HIV/SIDA.

KA PAE'AINA (HAWAI'I)

El ejército de los EE.UU. amenaza el Valle Makua

El Valle Makua es un lugar sagrado. Es el lugar de nacimiento de los kanaka maoli, los pueblos indígenas de Ka Pae'Aina (Hawai'i). Para el ejército de los Estados Unidos, el Valle Makua es un área de entrenamiento necesitada urgentemente, donde las tropas de la 25ª División de Infantería podrían disparar rifles, morteros y obuses con la mayor aproximación a un combate a corta distancia.

658



El Ejército de los EE.UU. planea reanudar el entrenamiento de combate en el Valle Makua de Hawai'i pero los grupos locales indígenas, residentes y ambientalistas dicen que el entrenamiento está destruyendo el legado cultural, histórico y ambiental del valle. "Nuestro problema con el ejército es que no entiende la significación del Valle Makua", dijo William J. Aila Jr., un marinero residente en la costa y abierto opositor de los planes del ejército: "Están bombardeando a la Madre Tierra".

El Valle Makua se eleva de la costa marítima de Oahu hasta las escarpadas montañas volcánicas de Waianae, hogar de una multitud de especies amenazadas. El suelo del valle está repleto de ruinas arqueológicas, incluso de restos de templos donde otrora fueron sacrificados seres humanos.

El ejército suspendió el entrenamiento en la Reserva Militar Makua hace dos años y en medio de un escándalo público desatado a continuación de varios incendios forestales iniciados por las armas de fuego. La presencia del ejército en el valle data de los años 20, cuando el servicio instaló emplazamientos de armas. Después del ataque japonés a Pearl Harbour, el ejército confiscó 6.600 acres en y en torno del valle para entrenar tropas para la Segunda Guerra Mundial, expulsando a poseedores de tierra que vivían allí. Hoy todavía ocupa casi 4.200 acres.

Durante décadas, el ejército y otros servicios bombardearon, ametrallaron violentamente y realizaron otro tipo de ejercicios de entrenamiento en el Valle Makua con relativa impunidad. Sin embargo, en años recientes, el entrenamiento ha atraído las protestas de los residentes y, cada vez más, la atención de los reguladores federales.

639

BEST COPY AVAILABLE

Los incendios que provocaron que el ejército suspendiera el entrenamiento en 1998, plantearon preocupaciones entre funcionarios del Servicios de Pesca y Fauna de los Estados Unidos sobre la amenaza impuesta a 41 especies de plantas y animales en peligro en o cerca del valle.

Entonces comenzó la batalla legal del ejército. Un grupo de residentes y un grupo de defensoría, el Earthjustice Legal Defense Fund, presentaron una demanda judicial exigiendo que el ejército cumpliera con la Ley de Política Ambiental Nacional y que se realizara una revisión minuciosa del impacto que el entrenamiento estaba teniendo en el valle.

El ejército finalmente arregló la demanda judicial, acordando no retomar los disparos de armas en Makua hasta que hubiera revisado cualquier impacto potencial y notificado a la opinión pública de antemano. Después de más de dos años de estudio, el ejército anunció en diciembre de 2000 que planeaba retomar el entrenamiento, aunque de forma más limitada, con unidades de más de 100 soldados que realizarían operaciones y dispararían armas en zonas rigurosamente delimitadas.

Los comandantes de la 25ª División argumentaron que habían diseñado el entrenamiento para minimizar, o eliminar, los efectos sobre los sitios históricos y el medio ambiente del Valle Makua, pero el plan provocó una nueva ronda de protestas y nuevas demandas judiciales.

Esta vez, los residentes sostuvieron que el ejército no había realizado un estudio de impacto ambiental suficientemente riguroso y caro. La evaluación de impacto ambiental tan rápida, dijeron, no consideró una variedad de temas, incluyendo si había sitios alternativos para el entrenamiento militar. Después de protestas que incluyeron una reunión comunitaria alborotada en el pueblo de Waianae en enero, los comandantes de la división retiraron el plan, diciendo que querían más tiempo para consultar con residentes y otras personas.

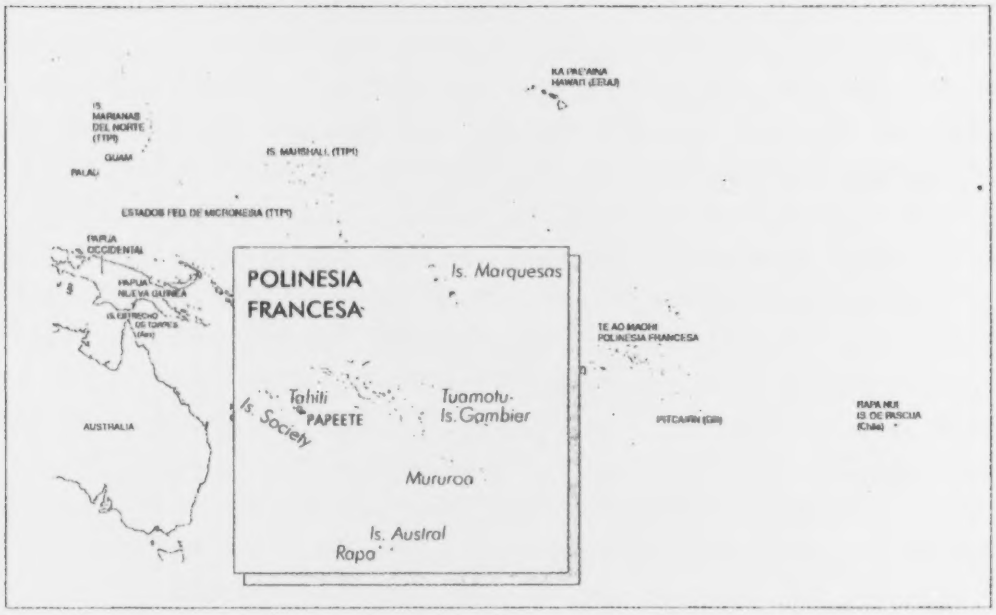
El ejército trató también de que se rechazara la demanda judicial, pero el 1 de marzo de 2001, un juez federal de Honolulu se negó.

TE AO MAOHI (POLINESIA FRANCESA)

Tavini gana terreno – pero Flosse gana otra vez

El presidente Gaston Flosse retornó al poder el 6 de mayo de 2001, en las elecciones para la Asamblea Territorial en Te Ao Maohi (Polinesia Francesa). Reforzado por la financiación del gobierno fran-

660



cés, el partido de Flosse *Tahoeraa Huiraatira* aumentó su mayoría en un escaño, ganando 28 escaños en la asamblea de 49 escaños, y el Presidente retornó a su quinto período en funciones.

El partido pro-independentista, *Tavini Huiraatira*, ganó 13 escaños en las elecciones, un aumento de dos desde las últimas votaciones en 1996. El partido autonomista, *Fetia Api*, que prometía un "tercer camino", ganó siete escaños, mientras que Chantal Flores, como independiente en el archipiélago Austral ganó la posición final en la asamblea.

En general, el porcentaje de votos para los partidos mayores fue: *Tahoeraa Huiraatira* – 48,8 %; *Tavini Huiraatira no Te Ao Maohi* – 25,4 %; *Fetia Api* – 13,1 %; *Ai'a Api* – 3,4 % *Taparu Amui no Tahaa Pae* – 0,7 %.

Las fuerzas pro-independentistas habían esperado un mejor resultado en las elecciones, apuntando a 18 escaños, pero el gran perdedor fue el político autonomista de larga data Emile Vernaudon, que entró en oposición con Flosse en años recientes. Esto benefició a *Fetia Api*, liderado por Boris Leontieff, el Alcalde de Arue. Leontieff, un ex ministro de Flosse, se opone a la independencia pero también es crítico de la corrupción y la malversación de Gaston Flosse.

Otra característica de estas elecciones fue la nueva ley electoral francesa que requiere paridad entre hombres y mujeres en las listas electorales. Así como líderes de larga data como Oscar Temaru y James Salmon, mujeres pro-independentistas como Tea Hirshon, Tina Cross y Tamara Bopp du Pont fueron electas en la lista Tavini. Entre otros candidatos electos en la lista Tavini están el ex líder sindicalista Hiro Tefaarere de *A Tia i Mua;* Marius Raapato; y Vito

BEST COPY AVAILABLE

Maamaatua (director de la estación radial pro-independentista *Te Reo o Tefana*).

Desde la clausura del centro de pruebas nucleares francés, el *Centre d'Expérimentations du Pacifique* (CEP) en 1996, Francia ha provisto una financiación de casi US$200 millones al año a la colonia. El CEP era la fuente fundamental de ingresos para la administración de Flosse y el Presidente Jacques Chirac garantizó una cantidad similar de ingresos a Flosse durante diez años después del fin de las pruebas, para facilitar la transición a una economía post-nuclear.

Flosse usó su control de la administración del territorio para atraer a la oposición hacia la mayoría – en el último gobierno, había 17 ministros y Flosse ha usado patronazgo del gobierno para obtener su apoyo. La revista *Tahiti Pacifique* informa que unos 500 trabajadores del gobierno con contratos a corto plazo fueron alentados a hacer campaña por la mayoría de Flosse, para asegurar que su empleo gubernamental fuera renovado.

El gobierno francés o las corporaciones francesas controlan los medios de difusión más importantes, y los políticos pro-independentistas son regularmente censurados, con libre acceso sólo a *Te Reo o Tefana*, la estación radial pro-independentista en la municipalidad de Faa'a. Flosse utilizó intensivamente la nueva estación TNTV para su campaña electoral (críticos del Presidente destacaron que los entrevistadores de la estación parecían estar usando preguntas escritas por la oficina de prensa del Presidente). En el período preelectoral, los comunicados de los medios destacaron regularmente las actuales crisis en las Islas Salomón, Fiji y Papúa Nueva Guinea, sugiriendo no muy sutilmente los peligros de la independencia política.

Los candidatos pro-independentistas trataron de movilizar a las bases. El 1 de mayo, apenas pocos días antes de las elecciones, cientos de simpatizantes de Tavini realizaron una manifestación y marcharon por todo Tahití portando la bandera azul y blanca de la independencia, marcada con cinco estrellas (simbolizando los cinco archipiélagos de Te Ao Maohi).

La división arbitraria e injusta de los distritos electorales, que asegura que un voto en los archipiélagos más alejados pesa mucho más que un voto en Tahití o en las densamente pobladas islas Windward es una importante ventaja para el partido gobernante Tahoeraa. Como miembro de la Asamblea Nacional Francesa, Emile Vernaudon había procurado una reforma electoral en el año 2000 para eliminar el desequilibrio, pero los cambios legislativos sólo condujeron a una expansión del parlamento Territorial de 41 a 49 escaños. Los políticos de los partidos pro-independentistas tienen enormes dificultades financieras, de transporte y comunicaciones, para alcanzar a los votantes de las islas más lejanas, en un país tan grande como Europa

occidental. En cambio, Flosse utilizó recursos gubernamentales para viajar y ofrecer atractivos para los votantes en los archipiélagos aislados.

En contraste, 32 de los 49 escaños de la asamblea se encuentran en las islas Windward (incluyendo las dos islas principales de Tahití y Moorea). Fue allí donde Tavini votó mejor, como Oscar Temaru destacó: "En muchos pueblos de Tahití, la oposición todavía tiene más apoyo que Tahoeraa".

ISLAS FIJI

¿Una mejor Fiji a través de la votación?

La sentencia de la Corte de Apelaciones de marzo de 2001 que establece que la Constitución de 1997 sigue siendo la ley suprema del país puso a Fiji en movimiento para nuevas elecciones generales en agosto de 2001. Se disputaban 71 escaños bajo el sistema del voto preferencial: 23 escaños comunales fijianos, 19 escaños comunales indo-fijianos, 3 para votantes generales, 1 rotuman y 25 escaños abiertos.

Los partidos fijianos y sus votantes

Los votantes para los 23 escaños comunales fijianos fueron cortejados por más de 20 partidos políticos con una profusión de ideas, actitudes y personalidades. Quizá un signo de las muchas diferencias entre políticos y políticas por parte de los indígenas fijianos sobre qué es necesario para proteger sus derechos e intereses. Pero la cantidad de partidos también reflejó actitudes de provincialismo y de lucha entre fijianos que aumentaron después del golpe de mayo de 2000. También reflejó la continua búsqueda de un buen liderazgo, ideales y desarrollo que beneficien al pueblo de Fiji.

La Constitución de 1997 fue central en el debate sobre los derechos e intereses fijianos. Dos de los nuevos partidos políticos fijianos formados a consecuencia del intento de golpe del año 2000 que surgieron como favoritos, el *Matanitu Vanua* (Partido de la Alianza Conservadora) y el *Soqosoqo ni Duavata Lewenivanua* (SDL) anunciaron entonces su intención de cambiar la constitución para garantizar a los indígenas fijianos la supremacía política.

663

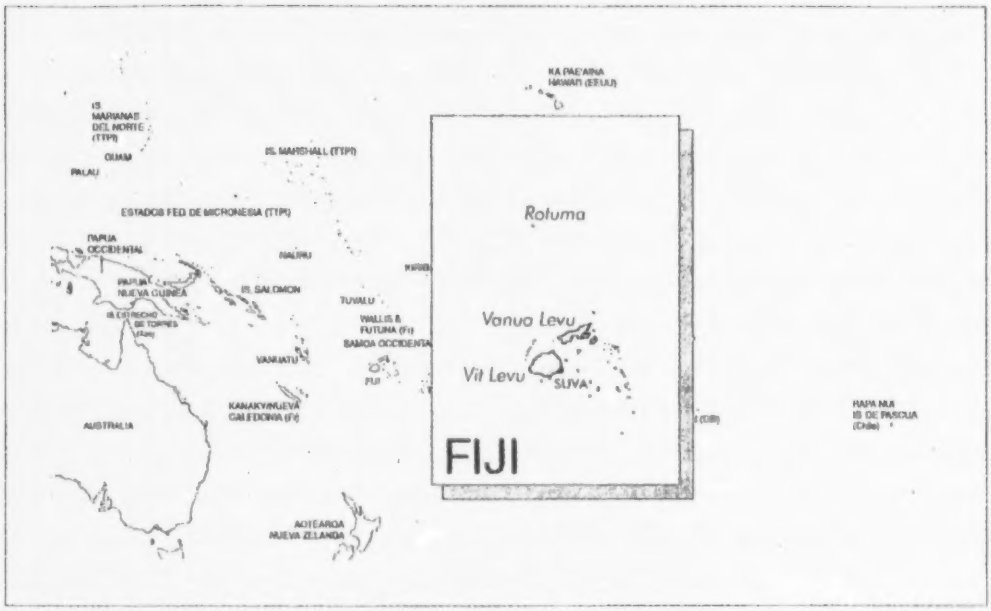
Vinculada a la cuestión de la supremacía política, estaba la cuestión de qué políticas deben llevarse adelante para el desarrollo fijiano en su propia tierra. El partido SDL, conducido por el vigilante Primer Ministro Laisenia Qarase tenía su "Proyecto para la acción afirmativa para los indígenas fijianos" como carta de triunfo. El partido *Soqosoqo ni Vakavulewa ni Taukei* (SVT), que gobernó el país desde 1992 a 1999 bajo la presidencia de Sitiveni Rabuka, tuvo que luchar porque muchos de sus miembros habían defeccionado hacia el SDL y la Alianza Conservadora. Ahora liderado por Filipe Bole, el partido asumió una posición más moderada oponiéndose al proyecto del SDL por ser racista, y aunque apoyaba una revisión de la Constitución de 1997, dijo que la supremacía política fijiana no era necesaria. El ex Primer Ministro y líder del golpe de 1987, Rabuka, se retiró de las elecciones mencionando razones personales. Por otro lado, el líder del golpe del 19 de mayo 2000, George Speight, y sus cómplices Ratu Timoci Silatolu e Ilisoni Ligairi obtuvieron permiso de la Corte para participar en las elecciones de agosto. Speigth y Silatolu se pusieron bajo la bandera de la Alianza Conservadora mientras que el ex soldado británico de las SAS, Ligairi, se presentó como candidato independiente.

Los partidos políticos fijianos moderados como el Partido de la Asociación Fijiana, liderado por Adi Kuini Speed, el Partido de Unidad Nacional (PANU) y el Nuevo Partido Unido Laborista (todos anteriormente parte del gobierno depuesto de la Coalición del Pueblo) condenaron la idea de la supremacía política fijiana, pero apelaron por un mejor liderazgo fijiano. Estos partidos, junto con el Partido Laborista tienen un carácter más multirracial, aunque tanto la Alianza Conservadora como el SDL tenían candidatos indo-fijianos y dijeron que ellos también creían en el multiracismo, con la condición que los intereses y derechos fijianos fueran protegidos a su agrado. Pero entre los partidos políticos fijianos, había muchos que eran de clara naturaleza provincial, y trabajaban en sus plazas fuertes en las provincias donde habían sido creados para que los impulsaran.

Los grupos minoritarios del país, llamados "electores generales", tenían tres escaños comunales en el Parlamento, que eran defendidos por el Partido Unido General y el Partido de los Votantes Generales.

La propiedad de la tierra y los recursos, y su uso siguieron siendo un tema clave. Las preguntas claves eran quién tomaría las decisiones sobre esto, cómo deberían tomarse estas decisiones, y cómo deberían ser distribuidos los beneficios. En esto es fundamental el rol de la Junta del Consorcio de Tierras Nativas (NLTB) que es fideicomisaria de todas las tierras de propiedad fijiana, y el Gran Consejo de Jefes (GCC) que tiene la palabra final sobre cualquier legislación que afecte a los indígenas fijianos.

664



Los partidos indo-fijianos y sus votantes

A diferencia de sus vecinos fijianos que tienen una cantidad de partidos para elegir, los indo-fijianos permanecieron con la interrogante histórica de si sus votos para los escaños comunales deberían ir al Partido Laborista, bajo Mahendra Chaudhry o al Partido de la Federación Nacional, ahora liderado por el sindicalista Attar Singh. Se esperaban algunos desafíos de la fracción que se separó de los laboristas y de aquellos indo-fijianos que habían decidido posicionarse bajo la bandera de los partidos fijianos.

El ex partido gobernante laborista, que ganó abrumadoramente las elecciones de 1999, continuó contando con su plataforma multirracial, su compromiso expreso con los trabajadores y los pobres, y en el continuo fuerte apoyo en las áreas cañeras para triunfar. Pero los laboristas también enfrentaron una batalla cuesta arriba porque el partido se había dividido recientemente en dos fracciones, el ex Primer Ministro Adjunto y laborista empedernido Dr. Tupeni Baba tomando la dirección de un Nuevo Partido Unido Laborista integrado por miembros insatisfechos con el liderazgo de Chaudhry. Quedaba por verse cómo esto afectaría el número de escaños que ganarían, ya que los dos partidos tienen políticas similares pero distintas personalidades. En realidad, se puede argumentar que hay muchos partidos políticos en Fiji no porque la gente tiene ideas y políticas diferentes, sino porque los políticos no simpatizan, o están insatisfechos con el liderazgo de cada uno.

Para los indo-fijianos, los temas trataban también de sus derechos en un país que muchos llamaban "patria". Líderes como Chaudhry

BEST COPY AVAILABLE

y Attar Singh habían llamado al proyecto de acción afirmativa presentado por políticos fijianos como "discriminatorio" en contra de ellos. También querían ver las dificultades de los cultivadores de caña resueltas de una forma satisfactoria, bien mediante compensación o proyectos de reasentamiento. Muchos estaban simplemente preocupados por los temas económicos y sociales.

Debido a los sucesos del 19 de mayo de 2000 y después, el punto central preelectoral de los partidos era la Constitución de 1997, la acción afirmativa y la tierra. Pero aprendiendo de las elecciones de 1999, donde el partido Laborista surgió victorioso gracias a un manifiesto fuerte sobre economía y temas sociales como eliminación del impuesto al valor agregado y la privatización, beneficios educativos, vivienda, tierra, etc., muchos partidos políticos también lanzaron manifiestos prometiendo a los votantes alivio económico y social.

Después de un año de debate y discusión sobre temas políticos y constitucionales, un público exhausto y hastiado parecía simplemente determinado a ver a un gobierno comprometido con la buena gestión, el imperio de la ley y el bienestar económico y social. Pero la seguridad y estabilidad quedaron en las mentes de la gente ya que seguía rondando en Fiji el desorden político del año 2000

Las elecciones destacan la división racial política de Fiji

Después de dos años de cambios dramáticos, el panorama político de Fiji cambió otra vez cuando el partido, de tres meses de existencia, *Soqosoqo Ni Duavata ni Lewenivanua (SDL)* ganó las elecciones generales de agosto de 2001. Liderado por el ex Primer Ministro interino Laisenia Qarase, el SDL ganó 32 escaños en el Parlamento de 71 miembros. El Partido Laborista de Fiji, que gobernó durante un año después de su victoria abrumadora en las elecciones de mayo de 1999 antes de ser depuesto en mayo de 2000 por el intento de golpe liderado por George Speight, obtuvo un segundo lugar con 27 escaños. Siempre se esperó que el Partido Laborista surgiría como una fuerza poderosa después de las elecciones dado que su apoyo de los votantes indo-fijianos permaneció intacto en su mayor parte, y eso por los 19 escaños comunales indo-fijianos que enfrentó solamente al luchador Partido de la Federación Nacional y el recientemente fraccionado Nuevo Partido Laborista Unido.

Pero la victoria avasallante del SDL entre los 23 escaños comunales fijianos sorprendió a muchos porque se enfrentó a 10 partidos políticos fijianos, y ganando, el SDL eliminó partidos políticos fijianos bien establecidos como el ex partido gobernante *Soqosoqo Ni Vakavulewa ni Taukei (SVT)* una vez liderado por Sitiveni Rabuka y ex

666

lidades e ideales entre la dirección de los dos partidos están también muy fuertemente opuestas. El SDL ganó 18 de los 23 posibles escaños comunales fijianos, y los otros cinco fueron para la Alianza Conservadora. El partido Laborista ganó todos los 19 escaños comunales indo-fijianos.

Incluso antes de que se conocieran los resultados de las elecciones, el líder del SDL y ahora Primer Ministro Qarase declaró que no podía y no quería trabajar con Chaudhry. Esta declaración lo puso en una situación candente después de las elecciones porque la Constitución de 1997 requería invitar a cualquier partido que ganara el 10 por ciento de los votos a unirse a él en el gabinete para formar un gobierno multipartidario.

Los forjadores de la Constitución de 1997 habían incluido el concepto de un gabinete multipartidario como forma de lograr que los partidos políticos opositores se consultaran mutuamente sobre el gobierno de la nación.

Como el partido Laborista era el único partido que alcanzó este límite del diez por ciento, Qarase se vio obligado a invitar al partido a unírsele en el gabinete, señalando de mala gana que como sus políticas eran opuestas, no había "base suficiente para una colaboración funcional con ustedes en mi gabinete".

Para sorpresa de Qarase, Chaudhry aceptó la oferta, citando en su respuesta que "en un espíritu de reconciliación nacional" estaba deseoso de trabajar con el SDL para reconstruir Fiji, y que la "la toma de decisiones en el gabinete debería hacerse por consenso, buscando bases especialmente con respecto a temas y políticas claves".

Qarase, copiando la decisión de Chaudhry de 1999 de excluir al SVT de su gobierno porque habían impuesto condiciones, respondió advirtiendo al Presidente que él comandaba la mayoría y que debería comenzarse con la jura de su nuevo gobierno. Esto se hizo inmediatamente. Después de negociar exitosamente con los partidos menores e independientes, incluyendo la Alianza Conservadora a la cual impuso abandonar sus demandas de amnistía para George Speight y su grupo, Qarase ahora tenía los números suficientes para formar un gobierno.

Pero empujar a los partidos menores e independientes a unírsele, significaba que el ex banquero tenía que darles algunas carpetas ministeriales. Si el partido Laborista también se le unía en el gobierno con un derecho al 38 % de la integración del gabinete, hubiera enfrentado una situación en la que el SDL se habría convertido en minoría en el Gabinete aunque había ganado las elecciones.

En su respuesta a Chaudhry, Qarase declaró que el líder laborista había impuesto condiciones inaceptables que harían que su gobierno no pudiera funcionar. Chaudhry respondió que él había aceptado la invitación a integrarse al Gabinete incondicionalmente. Lo que fasti-

dia a muchos observadores es que no hubo diálogo o intento de negociación en el "espíritu de la constitución", simplemente una oferta de invitación, aceptada, pero luego rechazada.

KANAKY (NUEVA CALEDONIA)

Nuevo gobierno en Kanaky

El 5 de abril de 2001 fueron electos un nuevo Presidente y Vicepresidente en Kanaky (Nueva Caledonia), ya que el ex Presidente Jean Lèques optó por renunciar después de las recientes elecciones municipales. Lèques fue reemplazado por Pierre Frogier, también del partido colono conservador *Rassemblement pour la Calédonie dans la République* (RPCR). En una movida significativa, la activista independentista kanak Déwé Gorodé fue electa Vicepresidenta del Gobierno de Nueva Caledonia, reemplazando a Leopold Joredié de la *Fédération des Comités de Co-ordination des Indépendentistes* (FCCI).

Lèques, el alcalde de prolongado servicio de la capital Noumea, fue reelecto en las elecciones municipales en marzo. Anunció que preferiría concentrarse en la municipalidad en vez de continuar como Presidente del país, y su renuncia significó una pérdida de todas las once posiciones gubernamentales.

La elección de Déwé Gorodé como Vicepresidenta es un reflejo de batallas legales y políticas durante los dos últimos años para asegurar que la mayoría de RPCR/FCCI en el gobierno no anulara la necesidad de un trabajo "colegial" para implementar el Acuerdo de Noumea de 1998 (firmado en mayo de 1998 entre FLNKS, el líder anti-independentista del RPCR Jacques Lafleur y el Primer Ministro francés Lionel Jospin). En el primer gobierno establecido bajo este Acuerdo en 1999, el RPCR y el FCCI tenían siete miembros mientras que el FLNKS tenía cuatro. En la votación de abril de 2001 en el Congreso, fueron electos tres miembros del FLNKS y uno de la Union Calédonienne: Roch Wamytan (Presidente de la Union Calédonienne UC), Déwé Gorodé, Tino Manuohalalo y Gérald Cortot. El gobierno de 11 miembros consistía además de siete miembros de la coalición RPCR/FCCI.

Las elecciones municipales y la composición del nuevo gobierno reflejan el actual equilibrio entre las fuerzas pro- y anti-indepen-

dentistas en el país. La elección de la poetisa, escritora y activista Déwé Gorodé como Vicepresidenta fue una importante afirmación de su trabajo en el primer gobierno y la fuerza de Palika en la coalición pro-independentista FLNKS. También destacó el creciente número de mujeres en el Congreso a continuación de las elecciones de mayo de 1999.

Los votos para los consejos municipales reflejaron un importante aumento del apoyo al partido pro-independentista Palika. El otro partido importante pro-independentista *Union Calédonienne* perdió terreno debido a divisiones internas que condujeron a una separación de las listas electorales y la pérdida de dos municipalidades a favor de la derecha (con una coalición LKS-RPCR-FCCI que ganó en Maré y el RPCR que ganó en Poya).

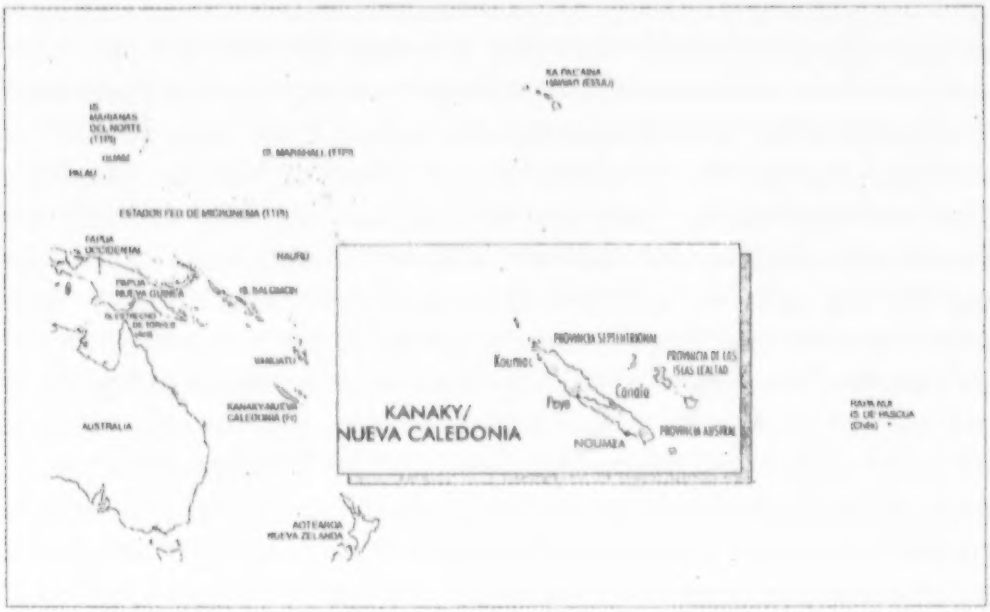
El FLNKS boicotea al Gobierno de Nueva Caledonia

En octubre 2001, el FLNKS decidió retirarse del gobierno e instruyó a sus miembros a boicotear los puestos del gabinete. La decisión fue ocasionada por una decisión del Consejo Estatal Francés de París, que invalidó el nombramiento de un miembro del FLNKS como miembro del gobierno, restringiendo así la representación del FLNKS en el gobierno.

La decisión se relaciona a la protesta formal del FCCI contra la elección del candidato del FLNKS Tino Manuohalalo al nuevo gobierno. Manuohalalo es miembro de *Rassemblement Démocratique Océanien* que está constituido por wallisianos y futunianos que apoyan la independencia de Kanaky. El FCCI alegó que su candidato Raphael Mapou había obtenido el mismo número de votos que Manuohalalo pero había perdido la elección por un tecnicismo. La ira del FCCI respecto a la elección refleja en parte la demostración de las elecciones municipales de marzo de 2001, donde perdieron sus importantes posiciones en Yaté, Canala y Belep a manos de candidatos pro-independentistas.

La decisión del Consejo Estatal significa que el FCCI gana un escaño más (ahora tiene ocho) y el FLNKS pierde uno de los suyos. El tribunal, que la jurisdicción suprema de Francia, no siguió una solicitud que estaba contenida en la presentación del FLNKS: el Presidente del partido pro-independentista Roch Wamytan quería que el gobierno fuera disuelto totalmente.

En reacción a la decisión, una reunión especial del FLNKS resolvió que como resultado de la invalidación de Manuohalalo, Déwé Gorodé, Vicepresidenta, y Roch Wamytan, a cargo de asuntos consuetudinarios y tradicionales no tomarían parte en el gobierno hasta que la instancia fuera revisada en el congreso anual del FLNKS.



La decisión de boicot del movimiento independentista kanak fue la culminación de meses de protesta contra la omisión de parte de sus colaboradores en el Acuerdo de Noumea, la coalición anti-independentista RPCR y el Estado francés, de mantener el "espíritu" del acuerdo e implementar el principio de "colegialidad" y de compartir el poder en el gobierno.

ISLAS SALOMON

Una nación en duda

El golpe civil de junio de 2000 destruyó literalmente la nación de las Islas Salomón para todos, incluso para los líderes del golpe. Devastó su trama social – a la gente se le hizo difícil confiar en el otro. Casi por sí mismo, el golpe destruyó la economía nacional – sólo quedaron disponibles pequeñas cantidades de dinero, hubo mucho menos trabajo que antes, ciertamente mucho menos educación, salud, transporte y asistencia social. Sin embargo, su efecto más destructivo fue el socavamiento de la confianza del pueblo en el gobierno – los ciudadanos ya no aceptan esta autoridad.

BEST COPY AVAILABLE

Una parte de la élite de las Islas Salomón vio a este golpe civil apoyado por la policía como un medio rápido para transformar un mundo que estaba cambiando rápidamente a su torno. El gobierno de la Alianza para el Cambio de las Islas Salomón (SIAC) estaba impulsando cautelosamente una mayor transparencia, responsabilidad financiera e inversión equitativa en el desarrollo, que no era del agrado de la élite. Demasiados miembros de la oposición estaban comenzando a experimentar un mundo que estaba desafiando la corrupción, la malversación y el robo abierto que se había convertido en una práctica operativa normal durante pasados gobiernos. Sin embargo, estas mismas prácticas hicieron un fuerte retorno con la nueva administración.

La seguridad básica de Salomón permaneció débil. La policía "solicitaba" a los criminales que dejaran de robar vehículos: autos, autobuses y camiones. Los militantes se estaban armando otra vez con armas robadas del arsenal Tangarere. Autobuses y autos, sin placas, muchos robados, circulaban descaradamente por las calles de Honiara sin temor de que los conductores fueran detenidos, cuestionados y arrestados. Un ex militante de Isatabu fue arrestado y más tarde fue encontrado brutalmente asesinado en Mount Austin. Aunque se arrestó rápidamente a un sospechoso, fue liberado igual de rápido y pronto fue visto caminando libremente. La cantidad de actos criminales aumentaba diariamente.

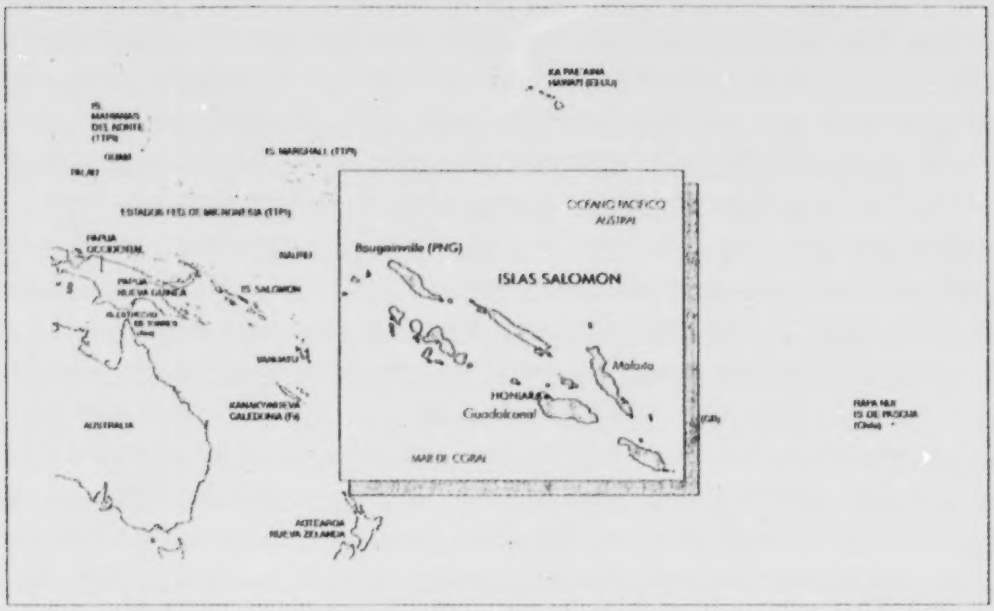
Esta fue la imagen de seguridad y las dimensiones sociales que los votantes enfrentaron cuando se prepararon para las elecciones nacionales del 5 de diciembre de 2001. Los cuatro últimos años han cambiado radicalmente a las Salomón históricamente, de una nación con un gran futuro a una que es dudosamente viable.

El silencio saluda la elección del nuevo Primer Ministro

La alegría nacional de celebrar una elección casi sin incidentes se tornó rápidamente en desaliento para muchos isleños cuando vieron a los recién electos políticos vendiendo votos y puestos políticos al mejor postor. En menos de dos semanas el país repitió otra vez el mortal proceso de dispararse a sí mismo en público. La reciente historia del país de heridas autoinfligidas elevó otra vez su espantosa cabeza.

Mientras que todo el mundo observaba, docenas de observadores electorales internacionales de la Mancomunidad Británica, Estados Unidos, el Foro de las Islas del Pacífico y ciudadanos de más de una docena de naciones recorrieron los centros de votación en toda la nación y declararon oficialmente la sexta elección nacional de las Islas Salomón como "justas y libres". A pesar de las vastas distancias

671



oceánicas de las islas, la dispersión de pequeños centros de votación remotos y la pobre infraestructura de transporte, los resultados electorales estuvieron listos en menos de tres días. Sin embargo, apenas los resultados electorales habían sido confirmados por el Gobernador General, la carrera por el poder político tornó la atención general en dirección a los nuevos 50 miembros electos.

La nación se congratuló con justicia a sí misma por un trabajo bien hecho. A pesar de la amenaza de armas de alto poder en algunos distritos electorales y dificultades físicas enfrentadas por las autoridades electorales, los Monitores Internacionales dieron su aprobación a las elecciones nacionales. Aunque hubo algunos incidentes menores de votantes que no podían encontrar sus nombres en la lista electoral, sellamiento impropio de urnas electorales y otras pequeñas inconveniencias, en general la tarea de elegir a los nuevos parlamentarios se realizó sin mayor tropiezo.

Sin embargo, muchos se decepcionaron rápidamente con los 50 miembros recién electos cuando casi inmediatamente comenzaron a flexionar irresponsablemente el recién encontrado músculo político. El nuevo parlamento contempló que 18 miembros del parlamento previo mantuvieron sus escaños, mientras que 32 nuevos miembros fueron elegidos. Parece evidente que una buena cantidad de miembros recién electos llegó a Honiara completamente arruinados económicamente. Habían gastado su último dólar en la campaña y algunos habían incurrido en serias deudas para ganar un escaño. Aunque las regulaciones de la financiación de campañas estipulan que deben mantenerse dentro del presupuesto de $5000, muchos candidatos

BEST COPY AVAILABLE

gastaron mucho más y el punto muerto político era una oportunidad dorada para retornar alguna de sus inversiones a sus "sustentadores".

En las dos semanas que separaron la elección nacional y la elección de un nuevo Primer Ministro, la nación fue lanzada a la confusión política. Cinco hombres con diversos apoyos políticos competían por el mismo puesto. Sir Allan Kemakeza obtuvo 29 votos en el primer conteo electoral y ganó efectivamente. Pero los excesivos alborotos políticos, la falta de integridad personal y el centrarse obsesivamente en sí mismo, habían dañado seriamente la nación a los ojos de los donantes y confundieron aún más al pueblo.

El electorado de 2001, desgraciadamente, envió una serie de señales mezcladas. Expulsó completamente a los ex ministros gubernamentales y parlamentarios sin relaciones ministeriales formales que habían arruinado completamente el país, pero también votó a otros de dudosa reputación. Hizo retornar a la cámara a muchos de los hombres que habían sido derrocados en el golpe de junio de 2000, pero votó a otros que se habían alineado estrechamente con los dirigentes del Golpe.

Pero quedó claro para todos los que quisieran ver que los votantes en toda la nación querían un cambio radical del pasado. Ese fue el mensaje primario. El país ha sufrido espantosamente y pidió un cambio para mejorar. Sin embargo, una serie de los que fueron electos constituyen un retroceso al pasado en vez de un paso hacia el futuro.

El silencio atónito del pueblo sobre la elección del nuevo Primer Ministro confirma la opinión de que es probable que el cambio positivo no venga por un tiempo, sino que la política de "negocios como siempre" va a tomar otra vez la posición central.

BOUGAINVILLE

Cambios legales para Bougainville

En agosto de 2001, se firmó un acuerdo de paz entre el Gobierno de Papúa Nueva Guinea (PNG), los diversos grupos que lucharon en la guerra de Bougainville y el gobierno provincial de Salomón del Norte.

El Parlamento de PNG fue suspendido y se decidió dedicar atención especial a la discusión de los planes de paz de Bougainville. El

673

Primer Ministro Mekere Morauta dijo que el objetivo de la sesión era asegurar que el Parlamento no fuera distraído por otros temas y políticas partidarias.

En enero de 2002, el Parlamento de PNG votó finalmente a favor del Acuerdo de Paz y aprobó unánimemente leyes de enmienda constitucional que abrirían el camino para un Gobierno Autónomo de Bougainville para fines de año y un referéndum sobre la independencia para la isla en 10-15 años. Es la primera votación sobre el tema, y la segunda y final tendrá lugar más adelante, durante 2002.

Aparte de dificultades legales y otras dificultades constitucionales que tenían que superarse primero para alcanzar este importante resultado, había que tratar los temas espinosos del abandono de las armas por los ex combatientes y la reconciliación. Por lo tanto, se solicitó a los jefes aldeanos ejercer su autoridad para llevar adelante el plan de abandono de las armas y se utilizaron ceremonias tradicionales de reconciliación para unir a las víctimas y a los perpetradores para curar sus comunidades que después de una década de guerra civil habían sido amargamente divididas.

Las previsiones claves de las leyes harán efectivo el establecimiento de un gobierno autónomo en Bougainville, y permitirán a la isla tener sus propias fuerzas disciplinadas, sistema bancario, su propia constitución y sus propios derechos aéreos y navieros. También permite que la isla conduzca sus relaciones exteriores y migración externa, y tenga su propia red de correo y telecomunicaciones.

PNG y los EE.UU. se oponen a la demanda de Bougainville contra Rio Tinto

Los gobiernos de Nueva Guinea y los Estados Unidos se han opuesto a la demanda legal de clase multimillonaria presentada contra el gigante minero Rio Tinto por los terratenientes de Bougainville liderados por Francis Ona. Los terratenientes de Bougainville han interpuesto acción legal contra Rio Tinto por alegato de genocidio y daño ambiental en la operación de la gigante mina de cobre Panguna, en Bougainville. La demanda legal fue interpuesta en la Corte del Distrito Federal ante la Jueza Margaret Morrow en abril de 2001.

La demanda legal alega que Rio Tinto, actuando en concertación con el Gobierno de PNG, era responsable por expoliar el medio ambiente en Bougainville y cometer "diversas atrocidades" y "crímenes de guerra", incluyendo un bloqueo militar que cortó el suministro de medicamentos a la isla, así como matanzas, bombardeos, violaciones y saqueos. La acción está siendo preparada por el "zar" legal de las acciones de clase civil, Steve Berman, un multimillonario gracias a

exitosas demandas legales contra la compañía productora de cigarrillos Philip Morris.

El Gobierno de PNG ha estado tratando de bloquear la demanda legal. Los documentos muestran que PNG había advertido a los Estados Unidos que las relaciones podrían ser seriamente menoscabadas si permitía que la acción progresara en la Corte de Distrito de los EE.UU. También había advertido que el actual proceso de paz sobre la Isla de Bougainville podría ser desviado por la acción.

En una actitud sin precedentes, el Departamento de Estado de los EE.UU. escribió a la jueza a cargo del caso, diciendo que si la demanda legal proseguía, afectaría las relaciones de EE.UU. con PNG. Los documentos muestran también que el Gobierno de PNG forzó a su Embajador ante las Naciones Unidas, Peter Donigi, y al Ministro de Justicia Francis Damem a retirar su apoyo a la demanda legal.

El 25 de marzo de 2002, la Jueza Morrow rechazó la acción presentada por los terratenientes de Bougainville con una declaración de interés diciendo que una prosecución del caso podría afectar los intereses políticos exteriores de los EE.UU.

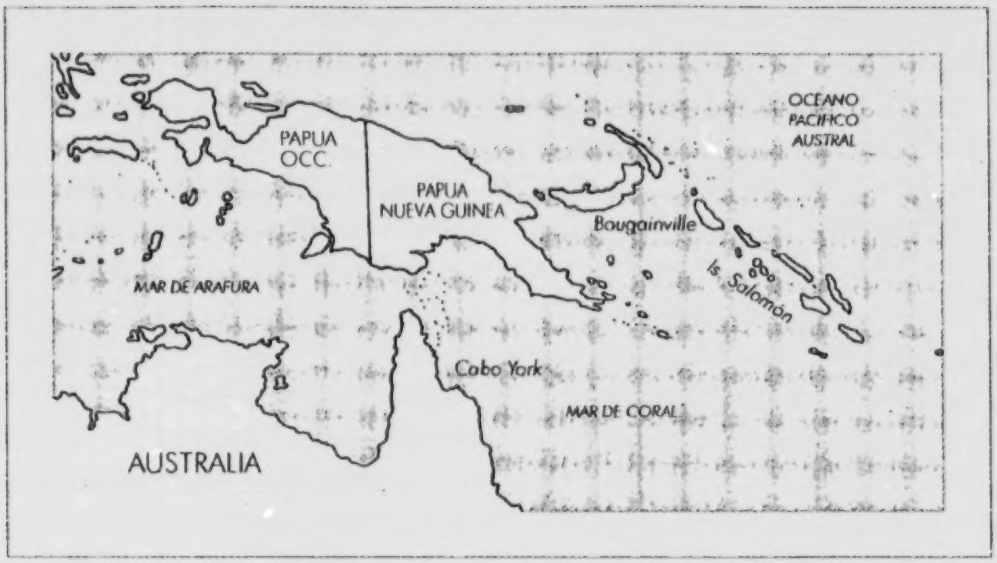
PAPUA OCCIDENTAL

Funcionarios de la ONU admiten: "El Acta de Libertad de Opción de 1969" fue una farsa

En noviembre de 2001, funcionarios de la ONU que condujeron la votación de 1969 de los jefes tribales admitieron públicamente que la mayoría de los ciudadanos de la provincia que cubre la mitad occidental de la Isla de Nueva Guinea fueron excluidos intencionalmente.

Cuando los holandeses otorgaron originalmente la independencia al archipiélago indonesio en 1949, mantuvieron el control de Papúa, argumentando que no tenía ningún vínculo étnico, lingüístico o cultural con las otras islas. A diferencia de los habitantes principalmente malayos de Indonesia, los papúes son racialmente melanesios. Mientras que el 85 % de los indonesios son musulmanes, los papúes son cristianos o animistas.

Holanda anunció que otorgaría la nacionalidad a Papúa y estableció una legislatura local el 1 de diciembre de 1961. Indonesia reaccionó lanzando una serie de incursiones a través de la frontera.



Los invasores fueron fácilmente derrotados por los marinos holandeses. Pero la administración de EE.UU. del Presidente Clinton temía que una derrota militar podría empujar a Indonesia al bloque comunista y presionó a los holandeses a entregar la colonia.

Los holandeses aceptaron finalmente, y en 1962 intervinieron las Naciones Unidas para preparar un referéndum de "una persona, un voto" por la autodeterminación para 1969. Sin embargo, en el plazo de un año, el organismo mundial delegó la administración de la región a Yakarta y dejó a cargo de la dictadura militar de Suharto la preparación de un plebiscito democrático.

Los indonesios, sintiendo la abrumadora oposición a su toma del poder, decidieron hacer campaña solamente entre 1.025 simpatizantes seleccionados a dedo. El resultado, no es de sorprender, fue un voto unánime por la integración. Apalabrado intensamente por Washington, el Consejo de Seguridad aprobó el voto.

El Consejo de Papúa rechaza la autonomía

La oposición a ser regidos por Yakarta parece casi universal entre los papúes. Los activistas independentistas, galvanizados por el referéndum supervisado por la ONU en 1999 que permitió al cercano Timor Oriental separarse de Indonesia y ser independiente después de años de lucha contra las fuerzas indonesias, están exigiendo un plebiscito similar para Papúa Occidental. Pero el gobierno Indonesio es inflexible en su resolución de mantener a la región, la mayor de la nación y rica en recursos naturales.

BEST COPY AVAILABLE

El Parlamento indonesio aprobó una ley especial de autonomía para Papúa Occidental el 23 de octubre dando a la tan abandonada provincia mayor poder e ingreso, pero la independencia total y los derechos humanos siguen siendo los temas principales para los papúes occidentales.

En una reunión del 19 y 20 de octubre antes de la aprobación de la ley, el Consejo del Presidium Papú rechazó las provisiones de autonomía especial ignorando las aspiraciones del pueblo y demostrando "no tener ninguna comprensión de la esencia real de la cuestión de Papúa.... La promulgación de la ley [...] es otro ejemplo de la forma en que el destino del pueblo papú ha sido decidido por otros...".

En una declaración emitida después de la reunión, el Consejo del Presidium declaró que "rechaza firmemente la autonomía especial para Papúa y realizará una lucha pacífica y democrática por la restauración de los derechos políticos y la soberanía del pueblo papú". La Asamblea Consultiva Papú y el Segundo Congreso Papú en 2000 habían dado el mandato al Consejo del Presidium para representar la lucha para lograr sus derechos civiles y políticos en forma pacífica, dando prioridad a un diálogo para rectificar la historia, dentro de Papúa Occidental e internacionalmente.

Como tal el Presidium expresó una profunda apreciación a los líderes y pueblos de los estados miembros del Foro de las Islas del Pacífico por su solidaridad y apoyo a la lucha del pueblo papú y exhortó otra vez al gobierno holandés, Indonesia, los Estados Unidos a reconsiderar honesta y responsablemente su rol en la conspiración política en la, así llamada, "Acta de Libre Opción" que robó a los papúes su soberanía.

Llamado por la no violencia

El Presidium exhortó a una detención de la intensificación de las operaciones militares por el ejército militar y la resistencia armada del Movimiento Papúa Libre (OPM). Aunque expresó el "más alto respeto" por la lucha guerrillera de 36 años del OPM por una Papúa independiente, el Presidium hizo un llamado por el fin de la confrontación armada. Exhortaron al OPM a trabajar juntos y presionar por esfuerzos pacíficos y exhortó a todos los papúes "resistir todas las formas de provocación de la policía para 'dividir y reinar' y hacer todo lo que esté en su poder para fortalecer la unidad".

Se exhortó al ejército y la policía indonesios a detener su "hábito" de usar operaciones militares represivas y adoptar un enfoque más humano que respete la dignidad del pueblo papú y sus derechos básicos.

Sin embargo, el misterioso asesinato del 10 de noviembre de 2001 de Thies Eluay, un prominente político pro-independentista, se agregó a las tensiones. Muchos papúes acusan al gobierno de tener la responsabilidad de la muerte del Jefe Eluay, quien fue encontrado estrangulado después de asistir a una cena con comandantes del ejército indonesio.

Los papúes hacen lobby por un estatus de observador en el Foro

El Consejo Papú esta procurando un estatus de observador en el Foro de las Islas del Pacífico, especialmente después del Comunicado Tarawa de octubre de 2000, que por primera vez toma en cuenta el tema de Papúa Occidental y la subsiguiente decisión del Foro de aceptar la solicitud de Indonesia de ser miembro del diálogo Post-Foro.

En julio de 2001, una delegación de Papúa Occidental que visitaba Fiji como parte de una consulta regional con países miembros del Foro, realizó consultas con el Secretariado del Foro y el gobierno interino de Fiji para "discutir, entre otras cosas, las perspectivas de la agenda para la reunión venidera del Foro en agosto a celebrarse en Nauru". Además de consultas en el ámbito de gobierno, la delegación papú también se reunió con la comunidad de ONG para dar una visión actualizada de la situación actual en Papúa Occidental y las implicaciones de la actual crisis de dirección en Indonesia.

Cuando se les preguntó si la aceptación de Indonesia como Miembro del Diálogo Post-Foro era considerada como una amenaza, Franzalbert Joku, el portavoz internacional del Presidium dijo que el Consejo de Papúa considera la inclusión de Indonesia como un paso positivo hacia la resolución pacífica del conflicto de Papúa Occidental. La delegación papú también reconoció la importancia y el prolongado apoyo de la comunidad de ONGs en defensa del derecho papú de autodeterminación e independencia y renovó su llamado por un apoyo mayor y activo en los preparativos de la próxima reunión del Foro. Pero aunque el Consejo de Papúa está abogando por una representación en el Foro, Indonesia advirtió a los países miembros del Foro ser prudentes en el tratamiento del tema de Papúa Occidental y se opone enérgicamente a la idea de admitir a Papúa Occidental como observador "porque Papúa Occidental ya está representada por Indonesia". Sin embargo, Joku advirtió que la ecuación no estaría completa si los líderes papúes no fueran consultados sobre el futuro de Papúa Occidental, de ahí la necesidad de invitarlos a la mesa de negociaciones.

El llamado de Papúa Occidental por la independencia de Indonesia ha ganado un apoyo considerable en los países y líderes del

673

Pacífico y permanecerá ciertamente en la agenda del Foro de las Islas del Pacífico durante los años venideros gracias al apoyo de las sociedades civiles regionales y de individuos. En particular, el Consejo del Presidium de Papúa tiene la esperanza de que el Foro otorgue a Papúa Occidental el estatus de "observador" en sus futuras cumbres y que los gobiernos del Pacífico, a través del Foro, se vean persuadidos a reconocer el derecho de autodeterminación del pueblo de Papúa Occidental.

GUAHAN (GUAM)

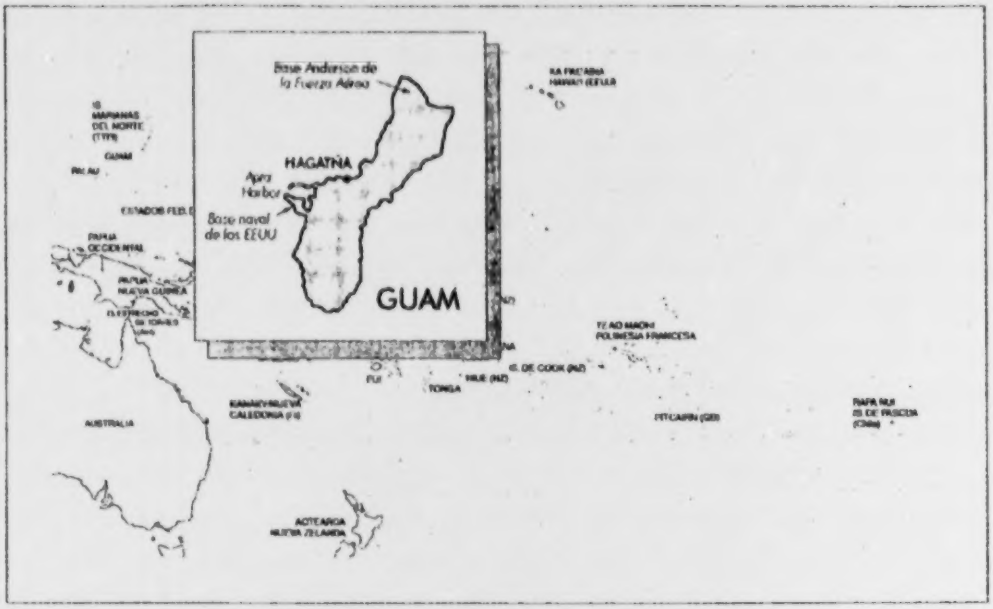
Guam en el centro de la escalada militar en el Pacífico

Como en el pasado, las islas del Pacífico Norte son un sitio fundamental para el despliegue militar de los EE.UU. en la región Asia-Pacífico – el Atolón Kwajalein en las Islas Marshall es usado para pruebas de misiles balísticos de los EE.UU. y en Hawai'i se encuentra el Comando del Pacífico de los EE.UU. y la 7ª Flota. Un estudio Rand, recientemente publicado, establece claramente que "habrá que renovar energías para examinar cómo América proyectará su poder y garantizará un equilibrio estratégico en la región Asia-Pacífico".

El informe de Rand Corporation, *"Los Estados Unidos y Asia: hacia una nueva estrategia y postura de fuerza"*, publicado por el Pentágono en 2001 expresa preocupación sobre la creciente oposición a las tropas americanas y recomienda trasladar las fuerzas de los EE.UU. a Guam, las Filipinas, el Sudeste de Asia y otros países cercanos a Taiwán.

El estudio recomienda un enorme acrecentamiento de la Fuerza Aérea en Guam, agregando hasta 200 aviones de combate y bombarderos a las fuerzas de la isla. Debido a la incertidumbre sobre futuros privilegios para tener bases en Japón, Filipinas y Corea, Guam "debería convertirse en un importante eje de poder para la protección en toda Asia".

El informe urge que debería acumularse una gran reserva de municiones, repuestos y otro equipamiento en Guam, suficiente para apoyar el despliegue de 50 bombarderos y 150 aviones de combate a reacción "en cualquier parte de la región". La gran escalada armamentista en Guam es parte de una "estrategia regional integrada" recomendada para la región. Hawai'i también podría terminar



acogiendo a más fuerzas de los EE.UU., dice el estudio, si surge la paz en la península de Corea y se necesitan o desean menos tropas allí.

Hay evidencias de que esta escalada en Guam ya está en marcha, como lo demuestra los nuevos despliegues militares y ejercicios militares en aguas cercanas a Guam.

Nuevos acontecimientos

En agosto de 2000, la Fuerza Aérea de los EE.UU. confirmó que había trasladado "un número no especificado" de misiles crucero convencionales de lanzamiento aéreo a Guam, que, dijeron oficiales de la fuerza aérea, "permitirá a los EE.UU. responder más rápidamente a crisis, particularmente en la región Asia-Pacífico". (*Jane's Defence Weekly*, 6 de septiembre de 2000).

Guam es usada para escalas de los navíos de los EE.UU. después de ejercicios militares y durante el tránsito hacia el Océano Índico. En abril de 2001, el portaviones *USS Kitty Hawk* visitó a Guam para realizar ejercicios de vuelo y descanso y relajamiento de más de 5.000 tripulantes.

La Marina de los EE.UU. estacionará tres submarinos nucleares de ataque rápido clase Los Ángeles en Guam, comenzando en 2002. El *USS Corpus Christi* arribará en abril, seguido por el *USS San Francisco* (SSN 711) en septiembre de 2002. La Marina todavía tiene que decidir sobre el tercer submarino. Se harán algunas construcciones para reparación de submarinos y facilidades portuarias en Apra Harbour,

BEST COPY AVAILABLE

y el submarino USS Frank Cable estacionado en Guam y un escuadrón de apoyo proveerán apoyo de mantenimiento.

Ejercicios militares

Además de estacionamiento de tropas de los EE.UU., el Pacífico es un área importante para ejercicios militares de guerra. En 2001, el Comando del Pacífico de los EE.UU. realizó 300 ejercicios militares con 37 países en la región (*New York Times*, 17 de mayo de 2001).

En 2002, el ejercicio militar bienal del Borde del Pacífico (RIMPAC) será realizado por primera vez en aguas cercanas a Guam. En mayo pasado, el Almirante Thomas B. Fargo, comandante de la Flota del Pacífico de los EE.UU. dijo que la fase final de RIMPAC 2002 será realizada en las aguas fuera de Guam y concluirá con visitas a puerto por varios navíos en la Estación Naval de Guam (RIMPAC 2000 incluyó participantes de Australia, Canadá, Chile, Japón, Corea del Sur, el Reino Unido y los Estados Unidos, participaron más de 22.000 efectivos militares, y 50 barcos y 200 aviones tomaron parte en el ejercicio).

En junio de 2001, el representante de las Marianas Septentrionales en Washington, Juan Babauta, sugirió que Tinian fuera considerada para operaciones militares sofisticadas en la región Asia-Pacífico, particularmente para propósitos de inteligencia y telecomunicaciones. Tinian fue usada como base militar durante la Segunda Guerra Mundial. Fue de Tinian que los EE.UU. lanzaron ataques con bombas atómicas contra Hiroshima y Nagasaki, en Japón.

Pero funcionarios de la vecina Saipan han expresado preocupación porque una serie de ejercicios de bombardeo del ejército de los EE.UU. en el área de Farallón de Medenilla, una isla al norte de Saipan, ha causado seria destrucción en los arrecifes circundantes. Farallón de Medenilla ha sido usada para bombardeos y prácticas de objetivos por el ejército de los EE.UU., en preparación para intervenciones en países asiáticos y en el Golfo Persa. Fue usada como terreno de entrenamiento por soldados americanos que fueron enviados a Kosovo a fines de los años 90.

681

ASIA DEL ESTE Y DEL SUDESTE

BEST COPY AVAILABLE

JAPON

A fines de 2000, el Gobierno japonés presentó al Comité para la Eliminación de la Discriminación Racial (CERD) por primera vez el informe periódico inicial y el segundo desde la ratificación de la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial, el 15 de diciembre de 1995. La razón de que el informe inicial y el segundo informe estuvieran combinados no es conocida por el autor. El CERD consideró el informe en marzo de 2001 en Ginebra.

Consideraciones del CERD

La Asociación Ainu de Hokkaido (AAH) decidió enviar delegados a la Oficina de la ONU en Ginebra para observar las deliberaciones y hacer lobby con los miembros del comité, suministrándoles información sobre la situación actual, sentimientos y aspiraciones del pueblo ainu.

Para los informes, el gobierno japonés utilizó los resultados de las investigaciones realizadas por el Gobierno de la Prefectura de Hokkaido. Hasta el presente, la AAH ha señalado que las cifras básicas, como la población ainu total y el número de las víctimas de incidentes discriminatorios, indicaban que tales investigaciones nunca fueron precisas debido al sistema de recolección de datos, como se explica a continuación. El Gobierno japonés suministra el presupuesto para las investigaciones al Gobierno de la Prefectura de Hokkaido y la AAH realiza las investigaciones. En realidad, cada organización miembro de AAH visita todos los miembros familiares posibles en su área para entrevistarlos, sin embargo, no todos los ainu están organizados en la Asociación. Algunos no quieren ser miembros porque viven en circunstancias fuertemente discriminatorias. El gobierno japonés también presume que sólo unos pocos ainu viven fuera de Hokkaido, a pesar de que hay muchos que lo hacen.

Uno de los mayores cambios después de la ratificación del tratado fue la abolición de una ley notoria, la Ley de Protección para Ex Aborígenes de Hokkaido, y la promulgación de la Ley para la Promoción de la Cultura Ainu en 1997. En sus Observaciones Finales, el CERD solicitó al gobierno japonés que incluyera en el próximo informe qué se había promovido, logrado y qué permanecía igual después de la promulgación. Esta fue una muy buena propuesta porque brindará una oportunidad para sostener una discusión interna entre los ainu y el gobierno japonés sobre la implementación de cada una de las medidas definidas por la ley.

El CERD también señaló que había muchas diferencias entre los datos de los informes gubernamentales y la información provista por las ONGs. Es de esperar que en la preparación para el tercer informe periódico, el Ministro de Relaciones Exteriores desarrolle una relación constructiva con las ONGs que se están esforzando por combatir la discriminación.

En los "Comentarios del Gobierno Japonés sobre las Observaciones Finales adoptadas por el CERD el 20 de marzo de 2001, relativas

BEST COPY AVAILABLE

al informe inicial y al segundo informe del Gobierno Japonés", el gobierno japonés declaró lo siguiente:

> *Las personas que viven en la prefectura de Okinawa o nativos de Okinawa son de raza japonesa, y generalmente, de la misma forma que nativos de otras prefecturas, no son considerados como un grupo de personas que compartan características biológicas o culturales conforme a las convenciones sociales y, por lo tanto, no los consideramos cubiertos por la Convención.*
>
> *Con respecto a "la población de Okinawa quiere ser reconocida como un grupo étnico específico y alega que la situación existente en la isla lleva a actos de discriminación contra el mismo", en el párrafo 7:*
>
> *1) Sabemos que algunas personas alegan que la población de Okinawa pertenece a una raza diferente que la japonesa; sin embargo, no creemos que este alegato represente el deseo de la población de Okinawa. También, como se describe en 1(2)(a), aquellas personas que viven en la prefectura de Okinawa o nativos de Okinawa son de raza japonesa y no son considerados generalmente como un grupo de personas que compartan características biológicas o culturales diferentes a las de la raza japonesa.*

Es un error del gobierno japonés escribir "Sabemos que algunas personas alegan que la población de Okinawa constituye una raza diferente a la raza japonesa." Ellos alegan que son un pueblo indígena de Japón. El gobierno japonés escribió también "no son considerados generalmente como un grupo que comparta características biológicas o culturales diferentes a las de la raza japonesa". No obstante, el gobierno no deja en claro quién considera que esto sea así. El gobierno japonés utiliza el término "raza" y "grupo étnico" como si no hubiera diferencia entre ellos.

Además, al discutir las "características biológicas y culturales" en la misma frase también indica que el gobierno no comprende las diferencias entre grupos raciales y étnicos. El término "características biológicas" debería ser usado para referirse a diferencias raciales y "características culturales" debería usarse para referir a diferencias étnicas. Esto no es solamente confuso. Hay que señalarlo como una gran equivocación que permite al gobierno evadir declarar a los okinawanos como un pueblo indígena de Japón. Nuestros amigos de Okinawa sólo piden ser reconocidos como un pueblo indígena; nunca afirmaron ser una raza diferente de la japonesa.

En el comentario, el gobierno japonés usa el término *"no son considerados generalmente"*, que no es una traducción correcta cuando se compara con el comentario en la versión en idioma japonés. En la

versión japonesa usan *"shakai-tsunen-jo"* que significa "en el sentido social general". Esto significa que la población japonesa dominante no considera a los habitantes de Okinawa como diferentes de ellos, sino como pertenecientes al mismo grupo étnico. Es bastante extraño que la mayoría de la población japonesa decida cuál grupo étnico es indígena y cuál no. Esta es una forma común de oprimir a los pueblos indígenas, que se encuentra en todo el mundo.

A pesar de la promulgación de la Ley de Promoción de la Cultura Ainu, el gobierno japonés no ha aclarado si reconoce, o no, a los ainu como un pueblo indígena de Japón. El texto siguiente ilustra esto muy bien. Está tomado de un documento que fue sospechosamente pasado a una ONG japonesa e incluye párrafos que luego fueron eliminados. Demuestra el intento del gobierno de suprimir cualquier mención de los ainu como pueblo indígena de Japón.

14. En relación con "el Comité recomienda al Estado parte adoptar medidas para seguir promoviendo los derechos de los ainu, como pueblo indígena", en el párrafo 17:

1) Como está incorporado en las Políticas Básicas sobre Medidas para la Protección de la Cultura Ainu y para la Divulgación y la Defensa de las Tradiciones de los Ainu y la Cultura Ainu (Oficina del Primer Ministro, Anuncio No. 25 del 18 de septiembre de 1997), en Japón, los ainu que vivieron en Hokkaido antes de la llegada de los wajin[1] al menos al fin de la época medieval, han sido reconocidos como una raza que tiene sus tradiciones originales y que desarrolló una cultura única, incluyendo el idioma ainu, que está basado en un sistema lingüístico diferente que el idioma japonés, así como maneras y costumbres originales.

2) Sin embargo, como no hay una definición internacional fija del término "pueblos indígenas" la cuestión de si los ainu son realmente un "pueblo indígena" en el sentido antes mencionado, necesita ser examinada cuidadosamente.

3) De cualquier manera, para promover fácilmente las medidas de bienestar Utari, que son implementadas por el gobierno de la Prefectura de Hokkaido para mejorar la situación social y económica de los ainu, el gobierno japonés estableció la Reunión Conjunta de los Ministros involucrados en las Medidas Utari Hokkaido en mayo de 1974 y ha intentado aumentar las diversas medidas, manteniendo un estrecho contacto con los ministerios relacionados. Además, el gobierno japonés está comprometido en diversos proyectos relacionados con los ainu, como la promoción de medidas para promover la cultura ainu y divulgar el conocimiento y generar conciencia de la tradición ainu entre el público en general, basado en la Ley para la Promoción de la Cultura Ainu y

para la Divulgación y Defensa de las Tradiciones de los Ainu y de la Cultura Ainu (Ley No. 52 del 14 de mayo de 1997) que fue establecida para construir una sociedad donde el orgullo racial de los ainu sea respetado y posibilitar que la cultura y tradiciones ainu contribuyan al desarrollo de culturas diversas en Japón.

15. En relación con "el Estado parte es también alentado a ratificar y/o usar como guía la Convención 169 de la OIT sobre Pueblos Indígenas y Tribales", en el párrafo 17:

. Como la Convención de la OIT incluye muchas previsiones además de la protección de trabajadores, que es el mandato de la OIT, y la Convención igualmente incluye previsiones que entran en conflicto con la legislación japonesa, el gobierno japonés se abstuvo de votar por la adopción de la Convención en la Conferencia Internacional del Trabajo. Se considera que la Convención incluye demasiadas dificultades para que Japón la ratifique inmediatamente.

Declaraciones discriminatorias de tres políticos del Partido Democrático Liberal

El 2 de julio de 2001, dos políticos muy influyentes, el Sr. Takeo Hiranuma, Ministro de Economía e Industria, y el Sr. Muneo Suzuki, ex jefe de la Agencia para el Desarrollo Hokkaido & Okinawa pronunciaron expresiones discriminatorias el mismo día.

El Sr. Hiranuma expresó en su discurso en Sapporo, el territorio tradicional de los ainu, que la rehabilitación económica después de la Segunda Guerra Mundial fue tan fácil y rápida debido a que Japón es un país monoétnico. Desplegó la misma ignorancia que el ex Primer Ministro Nakasone quien declaró en los años 80 que Japón era intelectualmente excelente debido a que era un país monoétnico en comparación con los EE.UU., que incluía a personas hispánicas. No sabía de la promulgación de la Ley de Promoción de la Cultura Ainu u otras medidas implementadas por el Gobierno a pesar de ser miembro del Gabinete. Esto indica el nivel intelectual de los políticos japoneses.

El Sr. Suzuki, en una conferencia de prensa en el Club de Corresponsales Extranjeros en Tokio, declaró que los ainu estaban completamente asimilados a los japoneses. Expresó que no eran diferentes de los ciudadanos japoneses y que los ainu hablaban japonés y asistían a escuelas japonesas comunes. Él es de la ciudad de Obihiro, Hokkaido, y tiene algunos amigos ainu. Conoce bien las actividades de la rama Obihiro de AAH en cuanto a transmitir la tradición, la fe y la cultura (como danzas, cantos, la lengua ainu, rituales y arte-

sanías) para reconstruir su identidad como grupo étnico. Aún así, el Sr. Suzuki pasa por alto esos esfuerzos y niega la importancia de esas actividades.

La AAH, la organización más grande de los ainu, envió peticiones a los dos oradores. Sin embargo, no aclaró al público por qué esas declaraciones eran discriminatorias contra el pueblo ainu. Es lamentable que el contenido de las discusiones entre la AAH y los oradores todavía no haya sido abierto, no sólo a los miembros de la AAH, sino también al público en general.

El Sr. Omi, actual jefe de la Agencia para el Desarrollo Hokkaido & Okinawa, hizo una declaración discriminatoria adicional varios meses después. También expresó que Japón era un país monoétnico. Si los incidentes relacionados a anteriores declaraciones discriminatorias del Sr. Hiranuma y el Sr. Suzuki hubieran sido solucionados sinceramente, esto no habría sucedido otra vez.

Nota

1 Los waijin, oriundos de la isla de Honshu, fueron los primeros pobladores japoneses en Hokkaido.

CHINA

China y Xingjiang después del 11 de septiembre

Los sucesos de Afganistán del año pasado pusieron a China en una posición difícil, pero también dieron a la dirección china más espacio para moverse contra lo que ellos caracterizan como actividades terroristas en Xingjiang, la enorme provincia más occidental de China, cuyo nombre oficial es Región Autónoma Xingjiang Uygur. China ha conservado relaciones amistosas con el régimen de Taliban y ha desarrollado lazos comerciales activos con Afganistán, sin reconocer al régimen diplomáticamente. Al mismo tiempo, China estaba preocupada de que Afganistán sirviera como campo de entrenamiento para los uigur quienes querían luchar contra el régimen chino en Xingjiang. Y las preocupaciones chinas no eran sin fundamento. Los noticieros occidentales han entrevistado en diversas oca-

683

siones a uygur venidos de China para ser entrenados militarmente en los campamentos de bin Laden.

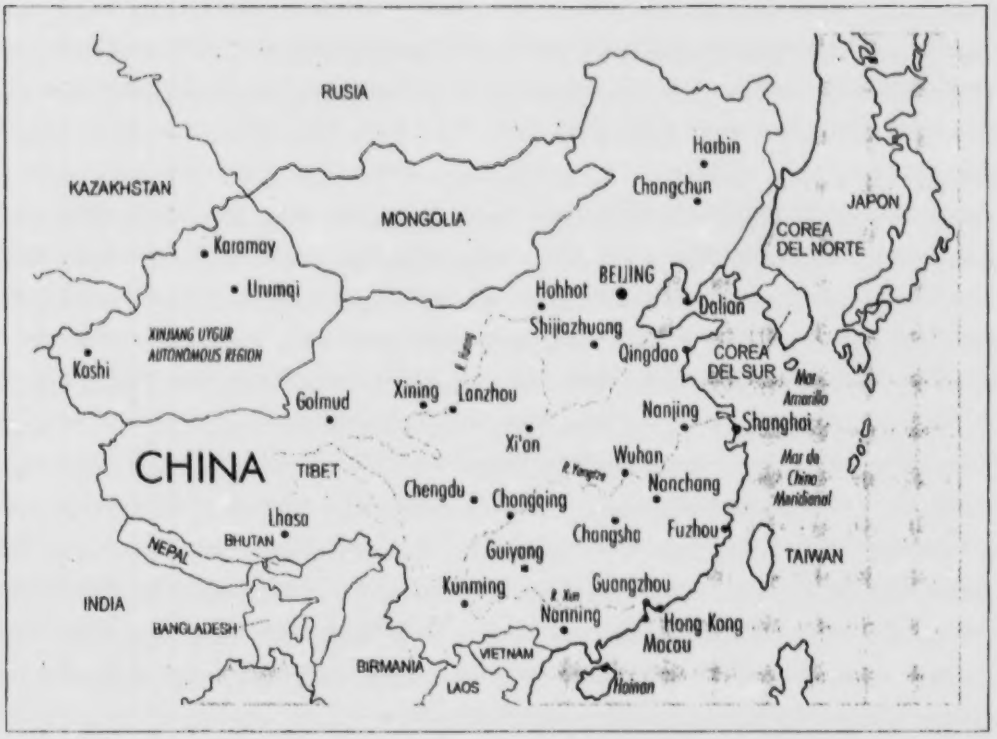
También a nivel estratégico, el 11 de septiembre condujo a un realineamiento en Asia Central. La cooperación de los llamados "Shangai-6", que está compuesta por Rusia y China y cuatro estados asiáticos centrales (Kazakhstán, Uzbekistán, Kirguizistán, y Tadzikistán), puede ser considerada como un esfuerzo de Rusia y China para mantener la región bajo control y contrarrestar la influencia americana. Pero después del 11 de septiembre, Kazakhstán, Uzbekistán y Kirguizistán otorgaron a los EE.UU. la oportunidad de afianzarse militarmente en la región, prometiendo bases para EE.UU., derechos de sobrevuelo, compartir inteligencia, etc. Uzbekistán en particular mostró su descontento con los Shanghai-6, formalmente llamada la Organización Shangai para la Cooperación (SOC), no participando en una reunión urgente de los seis estados en la capital kirguiza, Bishkek, en octubre del año pasado.

El gobierno chino fue bastante rápido para explotar el nuevo frente contra el terrorismo para su propio objetivo. Ya el 19 de septiembre del año pasado, el ministro chino de seguridad pública, Jia Chunwang, declaró que China estaba comprometida en la batalla internacional contra el terrorismo. Luego, en octubre de 2001, el Ministro de Relaciones Exteriores chino, Tan Jiaxuan subrayó en una reunión con el Asistente de Secretario de Estado Americano, James Kelly, que China estaba librando una batalla contra lo que él llamó "los terroristas de Turkistán Oriental". Este es un cambio radical de terminología del lado chino, quienes hasta el momento no habían mencionado el nombre de "Turkistán Oriental". La intención era claramente vincular a aquellos que utilizan este término con las actividades terroristas.

En un informe que fue emitido en enero de 2002, el gobierno chino culpó a una organización llamada Movimiento Islámico de Turkistán Oriental por más de 200 ataques terroristas en la última docena de años. El informe dijo además que desde fines de los años 90, Osama bin Laden, en cooperación con otros grupos terroristas del Asia central y oriental, había entrenado grupos de militantes que habían retornado a Xingjiang y establecido células secretas de resistencia contra la dominación china.

La campaña china contra el malestar étnico en Xingjiang no es de ninguna manera nueva. Una campaña de "alta presión, golpear fuerte" ha estado vigente durante los últimos 5 años. Pero, curiosamente, en varios casos los golpes asestados han sido contra grupos cuyos líderes en los comunicados de prensa chinos son nombrados con nombres chinos. Esto ha llevado a algunos comentaristas a especular si las autoridades chinas querían culpar a los musulmanes por acti-

234



vidades criminales, mientras que en realidad están reprimiendo bandas criminales lideradas por chinos.

En marzo de 2002, Amnesty International publicó un informe sobre la situación en Xingjiang que establecía que China había detenido, durante los pasados seis meses, varios miles de personas, había clausurado mezquitas y había obligado a líderes comunitarios claves, incluyendo imanes, a asistir a clases de –así llamada- educación política. En el informe, Amnesty acusa al gobierno chino de usar el término "terrorismo" para cualquier forma de protesta moderada contra la mala administración china de la región.

TIBET

Después de más de 50 años de ocupación china todavía se niega a los tibetanos su derecho fundamental de autodeterminación. Como habitantes de un país ocupado que está siendo cada vez más colonizado por China y donde la cantidad de colonos chinos sigue creciendo, los tibetanos comparten muchas características con los

BEST COPY AVAILABLE

pueblos indígenas del resto del mundo. Considerándose una nación ocupada, la mayoría de los tibetanos quiere recuperar su independencia. Los continuos esfuerzos del Dalai Lama para entrar en diálogo con el gobierno chino sobre el tema del futuro de Tibet no han sido exitosos aunque no solicita la independencia.

Siguen las violaciones de derechos humanos

China saçó provecho del incidente del 11 de septiembre para justificar la represión interna y aumentar las acciones del gobierno contra los calificados de "separatistas", incluyendo a los uygur y tibetanos. Queda por verse si esto aumentará la cantidad de violaciones de derechos humanos en Tibet. Durante la campaña de "golpear duro" del pasado par de años, la seguridad ya ha sido reforzada y aumentó la cantidad de sentencias de muerte. En Tibet la campaña ha sido dirigida fundamentalmente contra los "crímenes políticos".

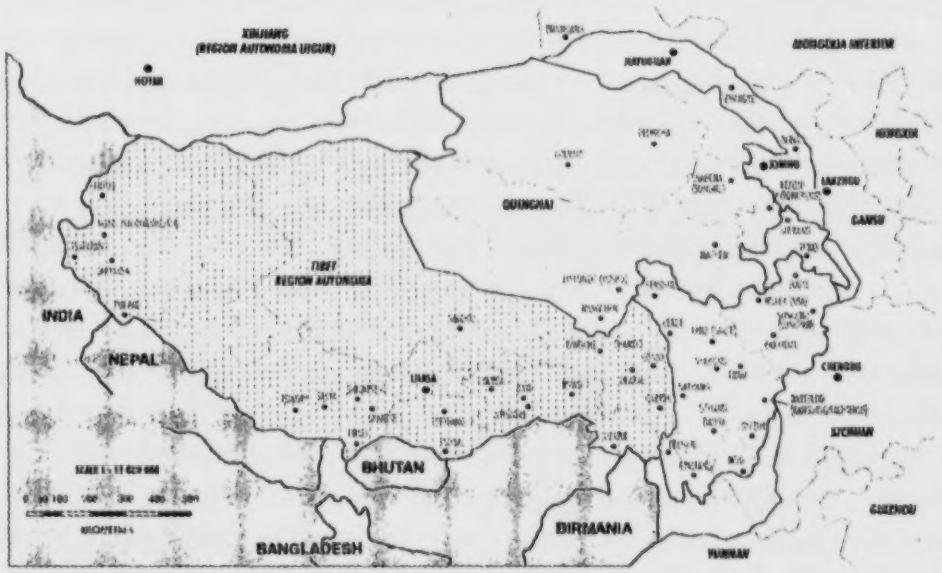
Las continuas y extendidas violaciones de derechos humanos de parte de China fueron un tema especial de la oposición internacional en 2001 a su oferta de celebrar las Olimpíadas en 2008 y su acceso a la OMC (Organización Mundial del Comercio). Ignorando la opinión mundial, el panel olímpico de selección y miembros de la OMC han omitido los bien documentados abusos de China contra su propio pueblo y en territorios ocupados, incluyendo Tibet.

En la 57ª reunión del Comité de Derechos Humanos en Ginebra, China bloqueó un debate sobre la actual situación de derechos humanos en Tibet y China. Sin embargo, 30 de los 53 estados miembros votaron contra la "moción de no acción" de China, o no votaron. La Unión Europea, así como las naciones occidentales de actitud similar, no apoyaron la resolución de EE.UU. sobre China.

Dos ONGs de Tibet, la Campaña Internacional por Tibet y el Centro Tibetano para los Derechos Humanos y la Democracia, participaron en la Conferencia Mundial Contra el Racismo en Durban, Sudáfrica, en septiembre de 2001. Esta fue la primera vez que ONGs involucradas con Tibet fueron acreditadas por ECOSOC para participar en la conferencia de la ONU.

En junio de 2001, se celebró el Cuarto Foro de Trabajo de Tibet, a puertas cerradas en Beijing. Esta reunión de alto nivel dio prioridad al "desarrollo económico" impuesto de arriba y la estabilidad por sobre todas las otras libertades y derechos del pueblo. Dejando de lado las normas aceptadas de derechos civiles y políticos como "nociones occidentales", China sigue apelando al relativismo cultural para justificar sus violaciones de derechos humanos. Aunque todavía alega que el desarrollo económico suplanta todos los otros derechos,

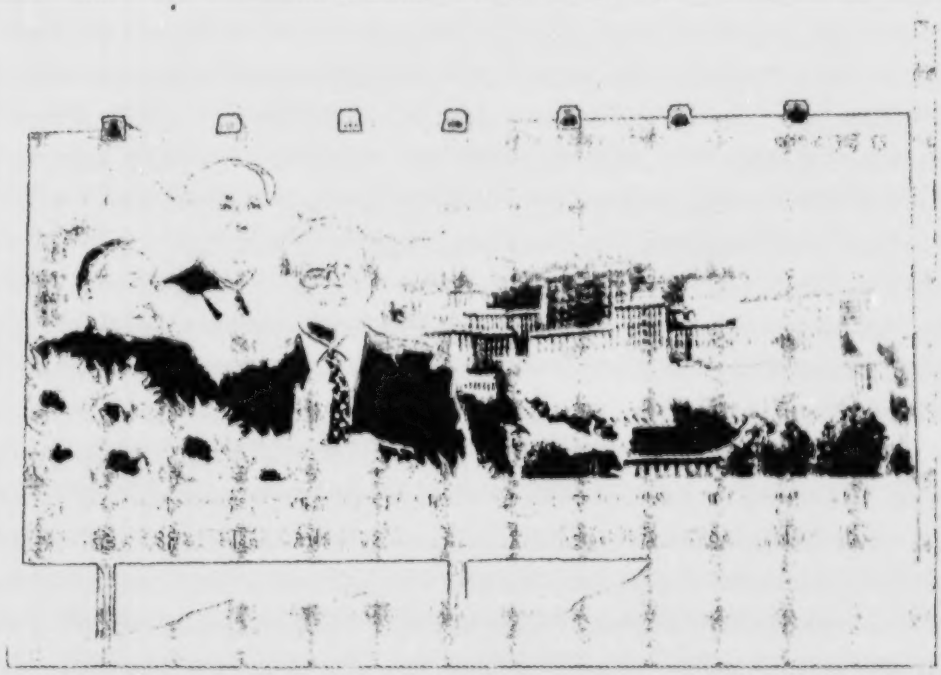
691



Región Autónoma de Tibet

Areas con estatus tibetano de autonomía en las provincias de Quinghai, Gansu, Sichuan y Yunnan

Otros territorios reclamados por el gobierno tibetano en el exilio



Afiche en Lhasa, celebrando los 50 años de "La liberación pacífica de Tibet" en 1951, según la concepción china. Deng Xiaoping, Mao Zedong y Jiang Zemin con el Palacio Potala y un típico paisaje tibetano como fondo. Foto: Vivi Walter

BEST COPY AVAILABLE

China ratificó el Pacto Internacional sobre Derechos Económicos, Sociales y Culturales (ICESCR) en febrero de 2001. El Convenio Internacional sobre Derechos Sociales y Culturales (ICCPR) todavía no ha sido ratificado aunque hace más de tres años que China se convirtió en signataria del documento. El núcleo de estos dos convenios internacionales es el derecho de todos los pueblos a la autodeterminación – a determinar libremente su situación política y procurar su desarrollo económico, social y cultural. Durante la dominación china de la vida política, económica, social, cultural y religiosa, ha habido una total ignorancia del derecho del pueblo tibetano a la autodeterminación.

Desarrollo, marginación y represión

A los tibetanos se les continúa negando su derecho a la subsistencia en su propio país. Por ejemplo, los nómadas enfrentan impuestos excesivos y cercos de tierras de pastoreo, que pueden finalmente destruir su estilo tradicional de vida. Los tibetanos de las áreas urbanas experimentan una severa discriminación y falta de oportunidades con relación al empleo y los negocios. Una de las más grandes amenazas a los medios de subsistencia tibetanos tradicionales es la continua destrucción del medio ambiente por la intensiva explotación china de recursos, de los que muy pocos beneficios recaen en el pueblo tibetano.

China alega que está impulsando económicamente a Tibet, pero las políticas y la infraestructura están concebidas para consolidar el control chino sobre la región y beneficiar a los inmigrantes chinos en detrimento de la población tibetana. No sólo hay una negligencia oficial sobre sus necesidades básicas, los tibetanos tampoco son consultados, ni participan significativamente en el desarrollo del país. El aflujo de colonos chinos perpetúa la discriminación contra los tibetanos, particularmente en áreas urbanas. Esto incluye una amplia discriminación en el empleo, otorgando preferencia a aquellos que hablan chino fluido y un tratamiento preferencial de los inmigrantes chinos.

En 2001, comenzó la construcción del controversial ferrocarril entre la capital Lhasa y Golmud en Qinghai. Los tibetanos temen que el ferrocarril facilite aún más la integración económica de Tibet a China y aumente la cantidad de colonos chinos en Tibet. Los chinos, principalmente los han, ya dominan la población en los centros urbanos más importantes. La construcción del ferrocarril es parte del "programa de desarrollo occidental" de China, que tiene como objetivo impulsar la economía de las regiones más pobres, pero también integrarlas a China.

693

Las autoridades chinas han introducido al chino como lengua de enseñanza en las escuelas primarias tibetanas. El tibetano ha sido el medio de educación en aproximadamente el 95% de las escuelas hasta hace poco. El nivel de educación sigue siendo bajo entre los tibetanos, parcialmente porque muchas áreas remotas no tienen escuelas y los padres son reacios a enviar a los niños a escuelas de internado, y parcialmente por que muchos padres no pueden pagar las tasas escolares. Una cantidad considerable de niños es enviada a través de la frontera a la comunidad tibetana en el exilio en India todos los años para asegurarles una educación tibetana adecuada. La nueva política educativa en China ha conducido a la clausura de todos los colegios de capacitación de maestros a nivel de todo el país en la Región Autónoma de Tibet (TAR). Consecuentemente, se emplean más y más maestros chinos.

La represión del budismo tibetano en Tibet ha alcanzado nuevas alturas. Además de la prohibición de poseer una imagen del Dalai Lama, en 2001 se implementó severamente la prohibición de celebrar su cumpleaños. En el caso de al menos dos monasterios –Serthar y Yachen- en Tibet oriental han sido parcialmente destruidos por unidades de trabajadores. La destrucción afectó especialmente las casas de los practicantes de la religión, que no eran originarios de la región. A miles de practicantes, incluyendo budistas chinos, les ha sido prohibido continuar su educación religiosa. En Lhasa, el joven Pawo Rinpoche[1] del monasterio de Nenang cerca de Lhasa fue forzado a abandonar su monasterio como consecuencia del escape del Karmapa[2] a India en enero de 2000. En muchos otros casos, monjes y monjas han sido expulsados de sus monasterios o su educación ha sido obstruida por unidades de trabajadores y reglamentaciones. Es cada vez más imposible realizar una completa educación budista en Tibet.

China celebró el aniversario de 50 años de su "liberación pacífica" de Tibet durante el verano de 2001. Como símbolo de la "liberación" se erigió un monumento de 37 metros de altura representando una "abstracción del Monte Everest" en un lugar prominente enfrente al viejo palacio de invierno del Dalai Lama, el Potala, en Lhasa. Se pidió a varios miles de tibetanos asistir a la ceremonia en la plaza frente al Potala para celebrar la "liberación" de Tibet, que para ellos simboliza la pérdida de la libertad. Al mismo tiempo se ordenó a la mayoría de los tibetanos permanecer en casa y las precauciones de seguridad fueron sumamente reforzadas.

La cantidad de tibetanos en prisión por razones políticas sigue siendo elevada. De acuerdo a algunas fuentes, la cantidad de prisioneros políticos ha aumentado a 254 en 2001. El décimo primer Panchen Lama, ahora de 12 años, está todavía en arresto domiciliario y las organizaciones internacionales de derechos humanos no tienen

permiso para visitarlo. Chadrel Rinpoche, quien estaba a cargo de la misión de búsqueda del Panchen Lama, encarcelado en 1995, no fue liberado en 2001 aunque había cumplido con su sentencia de 6 años. Han ocurrido varias muertes entre los prisioneros, incluyendo una monja de 28 años que estaba cumpliendo el último año de su sentencia de 10 años y un monje, que tenía poco más de 20 años, que fue arrestado cuando intentaba escapar de Tibet. Durante la campaña de "golpear duro" fueron ejecutados al menos 6 tibetanos en TAR.

Las autoridades chinas alegan haber arrestado aproximadamente 2.500 tibetanos que trataban de cruzar la frontera con Nepal en 2001. Aproximadamente 2.500 tibetanos logran escapar cada año pero este año los controles de seguridad han sido reforzados debido parcialmente al estado de emergencia en Nepal. La policía fronteriza nepalesa envía una creciente cantidad de refugiados tibetanos de vuelta a manos de la policía fronteriza china. Los tibetanos no tienen estatus de refugiados en Nepal. Se espera que continúen hacia el exilio en India después de un corto tiempo en el centro de recepción de refugiados en Katmandú. Las autoridades consideran a los extranjeros sin visa en Nepal como ilegales. Las autoridades chinas están cada vez más reacias a otorgar visas a los tibetanos para Nepal.

Notas

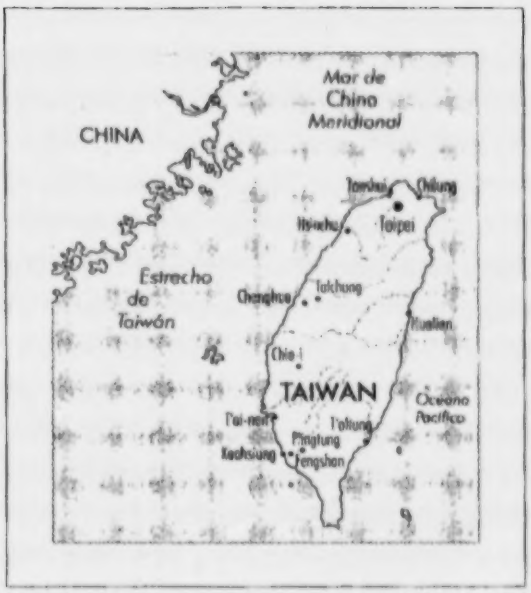
1 "Rinpoche" es un título honorario que significa "precioso". Es utilizado frecuentemente para designar a los maestros budistas (lamas) y los jefes del monasterio

2 El Karmapa es la autoridad principal de una de las cuatro escuelas kagyupa tibetanas y es considerado como el tercero en la jerarquía general del budismo tibetano.

TAIWAN

Los pueblos indígenas de Taiwán han experimentado muchos cambios de regímenes, desde la Dinastía Chin y la colonización japonesa hasta el día de hoy. En los primeros cincuenta años del actual régimen, el KMT (KouMinTang, el Partido Nacionalista) fue el único partido gobernante. El KMT no tenía ninguna política indígena real sino que procuró más bien implementar programas asimilacio-

695



nistas. Y bajo su democracia superficial, todo lo que hizo fue nutrir a una simbólica "élite indígena".

El actual movimiento indígena en Taiwán comenzó a finales de la era del KMT. Como muchos otros activistas de Taiwán, los protagonistas del movimiento indígena primero se integraron a una corriente "no-KTM" de disidentes políticos, llegando luego a una cierta afinidad con el partido de oposición, el Partido Democrático Progresista (DPP). En 1999, cuando el candidato del DPP, Chen Shuibian (ahora presidente) estaba haciendo su campaña por la presidencia, varios activistas indígenas se organizaron para alentarlo a que firmara el "Tratado de una Nueva Cooperación entre los Pueblos Indígenas y el Gobierno de Taiwán" (el Tratado) con representantes de diferentes comunidades indígenas. Al firmar este tratado, el Presidente Chen prometió promover la autonomía de los pueblos indígenas. Desde entonces, la autonomía, un sueño de largas décadas, ha sido finalmente incluida en la agenda del gobierno.

La nueva cooperación y el gobierno del DPP

Chen asumió la presidencia por un período de 4 años en mayo de 2000. Siguiendo su promesa dada durante la campaña, en el Principio Guía de Gobierno 2001, su primer ministro incluyó en su agenda "el delineamiento de la autonomía indígena" y "la investigación y recuperación de sus territorios culturales tradicionales". También asignó la dirección del Consejo de los Pueblos Aborígenes (APC, el organismo administrativo más elevado para asuntos indígenas) a Yohani Iskakavut, quien ha sido un activista indígena durante largo tiempo y uno de los representantes indígenas que firmaron el Tratado.

En sus dieciocho meses de funciones (de mayo de 2000 a diciembre de 2001), Yohani se concentró en varios temas importantes, como un Proyecto de ley sobre Autogobierno Indígena, Prueba de Competencia en Lenguas Indígenas, Investigación sobre Territorios Tradicionales

BEST COPY AVAILABLE

y la Revitalización de las Comunidades Pingpu (las más asimiladas comunidades indígenas de las llanuras).

Aunque los activistas indígenas siguen cuestionando si es apropiado que APC predomine en el diseño de los sistemas políticos indígenas, y aunque no se ha encontrado todavía una respuesta satisfactoria, la autonomía indígena ya no es, al menos, solamente una ilusión. Las ideas sobre autonomía se han concretado más durante el curso de todos estos debates.

Reorganización del Gabinete después de las elecciones parlamentarias

Una cosa que nunca se debería olvidar es que la actual situación es el resultado de negociaciones entre activistas indígenas y un partido político dominado por la población mayoritaria han (descendientes de los colonos chinos). Esto significa que el acuerdo puede ser reconsiderado por ambas partes si la realidad política cambia, y que los frutos de los esfuerzos de los activistas indígenas pueden no ser duraderos.

A fines de 2001, se celebraron elecciones parlamentarias. Aunque ocho escaños están reservados para representantes indígenas, queda en duda en qué medida esto asegura una representación adecuada de los pueblos indígenas de Taiwán. El hecho que los pueblos indígenas pertenecen a comunidades diferentes es generalmente reconocido. Sin embargo, excepto para APC, estas comunidades no significan nada en el sistema político general. En vez de reconocer la diversidad de los pueblos indígenas (APC reconoce a más de diez grupos), se ha hecho una simple división en dos grupos, los Pueblos Indígenas de la Montaña y los Pueblos Indígenas de la Llanura, que refleja la mentalidad asimilacionista que todavía prevalece entre la mayoría gobernante han. Esta reserva de ocho escaños parlamentarios no permite la representación de todas las comunidades indígenas. Los escaños están asignados de acuerdo a la ridícula categorización de pueblos indígenas de las montañas o de las planicies. Otro aspecto preocupante de este sistema dudosamente "democrático" es que los candidatos necesitan más de 7.000 votos para obtener un escaño en el parlamento. Sin embargo, en seis comunidades indígenas reconocidas por APC hay menos votantes calificados que la cifra requerida. Aunque el Presidente Chen también prometió un representante nacional por cada comunidad indígena en el Tratado, hasta el momento sólo ha sido de la boca para afuera.

Debido a intereses políticos opuestos, la idea de autonomía y representación fue relegada en la campaña electoral. La elección tuvo

697

como resultado diez miembros indígenas en el parlamento (ocho sitios reservados y dos de la lista partidaria) quienes, sin embargo, representan sólo a tres comunidades indígenas importantes. Los resultados indican una vez más que, bajo el sistema "democrático" existente, la mayoría de las comunidades indígenas no tienen ninguna oportunidad de participar y ser representadas. Además, dado el sistema de nominación partidario, las élites indígenas son sumamente dependientes de los partidos políticos dominados por la mayoría han, lo que significa que estos individuos pueden estar más interesados en su propio èstatus político dentro del partido que en la lucha por los derechos de su pueblo.

Con respecto a APC, la institución administrativa del gobierno responsable de los asuntos indígenas, el gobierno del DPP, que hizo promesas a las comunidades indígenas para ganar su apoyo, nombró inicialmente un activista indígena al cargo de director de APC. Pero cuando el gabinete fue reorganizado de acuerdo a la nueva composición parlamentaria en enero de 2002, dada las próximas elecciones presidenciales en 2004, el DPP asignó el cargo a un miembro del KMT. Aunque el nuevo director de APC fue alcalde en un municipio con una gran población indígena durante ocho años, mostró poco interés en los temas indígenas más urgentes, como el autogobierno, la reivindicación de tierras, etc. Por lo tanto, el trabajo que quedó sin finalizar por la dirección previa de APC puede ser pospuesto otra vez indefinidamente.

En los fines de la era del KMT, los activistas indígenas cooperaban selectivamente con el DPP el cual mostró alguna apertura. Pero la reorganización del gabinete muestra claramente que, dado que el DPP desea mantenerse en el poder, el 1,5% de pueblos indígenas del país constituyen un banco de votantes demasiado pequeño para dar al partido suficientes motivos para llevar adelante una política indígena más honesta y progresista.

Llamado a un jefe local pangcah: la demanda de autogobierno de las bases

Aparte de las elecciones parlamentarias, las elecciones para jefes locales y consejeros fueron otro importante acontecimiento reciente. Las elecciones eran más bien como una lucha frente a frente, ya que el rol de los funcionarios locales es más importante para la vida cotidiana del pueblo, y el conflicto de intereses aún más severo.

El sistema electoral para jefes locales en las regiones indígenas no es menos cuestionable que el de la cantidad de miembros indígenas del parlamento. Con la misma mentalidad asimilacionista, las regio-

698

nes indígenas están divididas en dos tipos de áreas administrativas, el Xiang de la Montaña (un xiang es el organismo administrativo más bajo) y el Xiang de la Llanura. Los cargos de jefes locales en los Xiang de la Montaña están reservados para los habitantes indígenas, pero los Xiang de la Llanura no tienen esa limitación. Así que, bajo el sistema político existente, los colonos han reemplazaron hace largo tiempo a los jefes indígenas en los Xiang de la Llanura. Debido a la falta de comprensión de la cultura indígena, los jefes locales han niegan o ignoran muy frecuentemente las necesidades y derechos de los habitantes indígenas.

Durante las elecciones para jefes locales a comienzos de 2002, algunos maestros pangcah de Fongbin Xiang impulsaron un movimiento para lograr un jefe local pangcah. Este es un Xiang de la Llanura, en el cual el 70% de la población es indígena y la mayoría pertenece a la comunidad pangcah, la mayor comunidad indígena de Taiwán. Y, sin embargo, durante la última mitad del siglo, ni un solo jefe local en Fongbin ha sido de origen pangcah.

Estimulados por los intensos debates sobre autogobierno entre los jóvenes activistas indígenas pangcah y los habitantes locales, y presumiendo que podría encontrarse un candidato pangcah que no perteneciera a ningún partido político, estos maestros pangcah de diferentes Xiang de las Llanuras organizaron un llamado a un jefe local pangcah en Fongbin.

Esa demanda es en sí misma un compromiso con el sistema político existente. El movimiento no apuntaba a transformar radicalmente el sistema político, ni tampoco solicitó cambiar la cuestionable composición electoral que ha existido durante largo tiempo. Simplemente apoyaba la idea que un miembro comunitario indígena asumiera el cargo y apeló por más participación de los miembros pangcah, y por la promoción del autogobierno indígena en la campaña.

Aunque al final un candidato han ganó la elección otra vez, la población local había experimentado por primera vez una movilización nacionalista pangcah. Bajo el actual sistema partidario, las elites políticas indígenas han limitado la oportunidad o disposición de promover la idea de una autonomía indígena completa. La demanda de autonomía y la organización de las bases constituirán, sin duda, importantes fundamentos para sustentar y cooperar con los activistas indígenas en luchas futuras.

Conclusión

La autonomía, la autodeterminación o autogobierno siempre han sido los temas promovidos por los activistas indígenas de diferentes

693

generaciones en Taiwán. Pero los debates giraron durante mucho tiempo en torno a meros conceptos. Los activistas indígenas intentaron aprovechar la oportunidad que se les ofrecía gracias a la situación política actual, mediante la manipulación de las relaciones entre diferentes partidos políticos así como sus propias relaciones con diferentes partidos. Recibieron una respuesta positiva del DPP en la contienda electoral previa, pero las próximas elecciones presidenciales en 2004 han hecho que las cosas cambien. Impulsado por el deseo de permanecer en el poder, el DPP tiene que evaluar la posibilidad de que una política indígena progresista podría ofender a sus votantes del pueblo han a cambio de los comparativamente pocos votos que podría obtener de los simpatizantes indígenas. La reciente reorganización del gabinete no fue más allá de lo esperado.

Todavía no puede decirse si el nuevo gabinete seguirá tratando los temas propuestos por los activistas y prometidos por el Presidente Chen en el Tratado. Pero es muy probable que las consideraciones electorales y tácticas prevalezcan finalmente sobre los compromisos hechos cuando se firmó el Tratado, un compromiso de reparación y compensación por el maltrato de los pueblos indígenas y los errores cometidos por previos gobernantes han. Es posible que los activistas indígenas no tengan la oportunidad de manipular las políticas partidarias como lo hicieron en el pasado. Ahora la prueba será ver si los activistas indígenas pueden movilizar y cooperar con las bases para obtener una mejor posición negociadora en el futuro con los partidos dominados por los han.

FILIPINAS

La promulgación de la Ley de los Derechos de los Pueblos Indígenas (IPRA) en 1997, durante la presidencia de Fidel Ramos, generó muchas esperanzas entre los pueblos indígenas y sus simpatizantes. No obstante el encanto se rompió inmediatamente, con problemas y choques al establecer la Comisión Nacional sobre Pueblos Indígenas (NCIP) a la que se le encomendó dirigir la implementación de la IPRA, la aprobación (o no aprobación) del presupuesto por el Congreso, el éxito de la relación con el Departamento de Medio Ambiente y Recursos Naturales (DENR) y cosas similares. Muchos de los problemas fueron atribuidos a la falta de voluntad política de la administración de Joseph Estrada en ese momento, quien, en forma

706

general, gozaba de popularidad entre los sectores populares e incluso entre los pueblos indígenas.

Luego llegó enero de 2001 y un cambio en la dirección nacional, y Gloria Macapagal-Arroyo tomó las riendas. Como parte de sus esfuerzos para solidificar su gobierno, la nueva presidenta se apoyó en las tareas que Estrada no había cumplido, entre ellas, la reducción de la pobreza y los problemas de los pueblos indígenas.

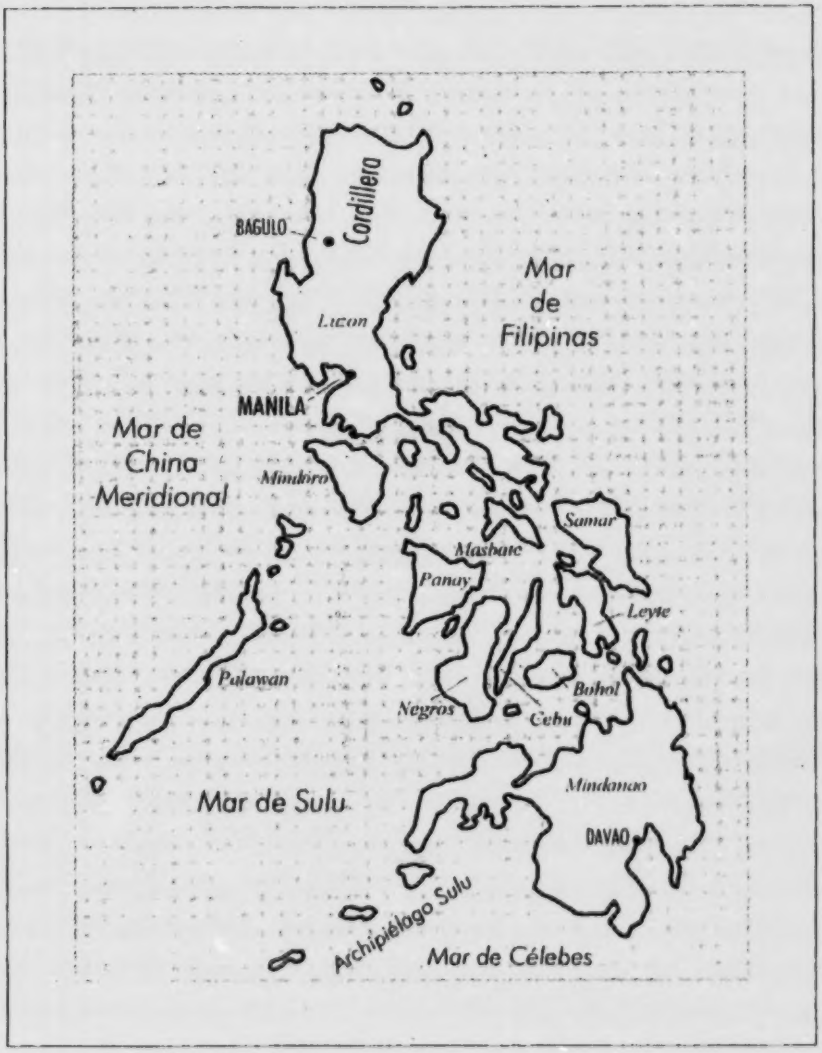
En realidad, la primera orden ejecutiva de la Presidenta Arroyo estableció la Oficina del Asesor Presidencial para Asuntos relativos a los Pueblos Indígenas (OPAIPA), que aspiraba a concretar las promesas de la IPRA. Howard Q. Dee, un ex miembro del panel gubernamental para negociaciones de paz con los rebeldes de Filipinas y renombrado por su integridad y sabiduría, fue elegido para encabezar esta oficina. El enfoque de Dee fue sumar la participación de la sociedad civil en su tarea; llamó a las ONGs, organizaciones y líderes de los pueblos indígenas. Juntos, decidieron sobre los intereses apremiantes que la OPAIPA debería tratar -la selección de nuevos Comisionados de la NCIP, la formación del Organismo Consultivo de la Comisión, con mandato de la IPRA, revista y revisión de los procedimientos para que las comunidades indígenas obtengan Certificados de Libre, Previo e Informado Consentimiento (CFPIC) y Certificados de Título de Dominio Ancestral (CADT) y una respuesta rápida a temas de emergencia de los pueblos indígenas- y formó grupos de trabajo para esto. El marco temporal otorgado a OPAIPA fue hasta el 31 de octubre de 2001, o hasta que se formara una nueva Comisión, lo que sucediera primero. Dee se mantuvo en su cargo hasta la fecha mencionada, aunque el Comisionado para llenar el último puesto fue nombrado apenas antes de ese momento.

La presión de diversos políticos y grupos de interés estaba siempre pendiente sobre OPAIPA. Se envió una carta a Malacañang, el palacio presidencial, firmada por veinte congresales de las Regiones 1, 2 y la Región Autónoma de la Cordillera (CAR) solicitando a la Presidente suspender la jura de los nuevos comisionados hasta que "se otorgue a los funcionarios políticos de la región tiempo suficiente para realizar consultas amplias y relacionarse con los posibles nominados".

Selección de nuevos comisionados

Sin una Comisión de trabajo completa, honesta y funcionando, las recomendaciónes quedarían en la nada. La ocasión era de la más oportuna en el sentido de que los términos de la mayoría de los Comisionados finalizaban en febrero de 2001 (uno de los siete Comisionados fue nombrado apenas antes del fin del gobierno de Estrada

701



y así su término de tres años no finalizaría hasta 2003), dando así a la Presidenta Arroyo manos libres en este asunto. Esta fue la tarea que la Presidenta Arroyo encomendó a OPAIPA.

Se formó un grupo de trabajo con este propósito. El grupo presentó una serie de requisitos y procedimientos para la selección de 6 Comisionados, derivados de una serie de consultas con organizaciones de pueblos indígenas y defensores de sus derechos. Dee formó un Comité de Selección compuesto por el Secretario del DENR, un antropólogo social, un líder indígena y encabezado por el Coordinador de la Comisión Nacional Anti-Pobreza (NAPC). El Comité de Selección presentó finalmente una corta lista de tres candidatos para cada una de las cinco de las siete regiones etnográficas (como las define la IPRA), en base a la cual el Presidente podía nombrar el Comisionado para cada una de estas regiones. No se pudieron presentar candida-

BEST COPY AVAILABLE

tos de la 6ª región etnográfica de donde proviene el Secretario del DENR porque él presentó sus propios candidatos. Finalmente, la Presidenta Arroyo ejerció su prerrogativa presidencial para hacer un nombramiento directo de un Comisionado de la región con la que ella tiene lazos personales y alguien que no fuera tan polémico como para que los pueblos indígenas y sus simpatizantes pudieran protestar.

El proceso de selección ilustró el tipo de dinámica con que OPA-IPA y sus grupos de trabajo tuvieron que competir. Para que los resultados sean significativos y prácticos, tiene que lograrse un equilibrio continuo entre las previsiones de la IPRA (que no podían ser fácilmente cambiadas y eran de una perspectiva a largo plazo), las directivas de las Reglas y Regulaciones Implementadoras (IRR, que pueden ser revisadas pero que, sin embargo, puede tomar algún tiempo), los diversos enfoques del desarrollo de las miríadas de ONG participantes y, por supuesto, las posiciones de las diversas organizaciones de pueblos indígenas y las dificultades de falta de tiempo y recursos financieros ante el deseo de que se realizara de forma tan participatoria y de base tan amplia como fuera posible.

Al fin del término de OPAIPA, había grandes esperanzas en la nueva Comisión ya que estaba compuesta, en mayor parte, por personas que habían sido sometidas a un proceso de selección negociado y tenían antecedentes de servicio a favor de los pueblos indígenas dentro de la sociedad civil.

Formación del Organismo Consultivo de la Comisión

La experiencia negativa con la primera Comisión había impulsado la búsqueda de formas para supervisar la actuación de la NCIP. Una forma posible para hacer esto era activar el Organismo Consultivo como estaba mandatado por la IPRA, cosa que no estableció la primera Comisión.

Hubo muchos problemas con relación a esto. Uno era que sólo la Comisión podía convocar el Organismo Consultivo, y lo podía hacer (o no) si lo consideraba apropiado. Por lo tanto, no podía tener funciones supervisoras significativas. Otro fue que tanto la IPRA como la IRR eran muy vagas en la descripción de los detalles para seleccionar los miembros del Organismo Consultivo. IRR estipulaba meramente que el Organismo Consultivo estaría compuesto por 35 miembros, 5 por cada región etnográfica, y que había que asegurar la representación de género y sectorial. El grupo de trabajo de OPAIPA sobre el Organismo Consultivo tuvo que enfrentar la falta de directivas más específicas.

Aparte de las dinámicas mencionadas antes, el grupo de trabajo tuvo que tratar el complicado tema de la representación. Otra vez, los

703

pueblos indígenas y los defensores de los derechos indígenas fueron puestos cara a cara con el hecho de que no existían cifras definidas sobre los pueblos indígenas filipinos. Primero, el conteo de población estaba basado en proyecciones estimativas. Segundo, no había habido un trabajo que concluyera el número total de grupos indígenas en el país, incluyendo el espinoso asunto de cómo distinguir entre grupos, subgrupos y comunidades. ¿Entonces cuáles serían las bases de representación?

Las consultas con las organizaciones de pueblos indígenas sobre los aportes iniciales de los diferentes talleres de OPAIPA fueron celebradas en cada región etnográfica a mediados de 2001. En el transcurso de su realización, evolucionó gradualmente un proceso para la selección del Organismo Consultivo. Las organizaciones de pueblos indígenas eran unánimes en declarar que se debería convocar a los organismos etnográficos consultivos regionales. También fue de acuerdo general que estos organismos consultivos etnográficos regionales existirían independientemente del Organismo Consultivo Nacional, es decir, podían convocarse incluso sin la solicitud de la NCIP. Cada región etnográfica determinaría la manera por la cual los miembros de su organismo consultivo serían seleccionados, optando muchos de ellos primero por la representación de los grupos importantes a nivel provincial. Luego cada organismo consultivo etnográfico regional sería responsable de determinar cómo seleccionaba los cinco representantes de cada región etnográfica para el Organismo Consultivo a nivel nacional. Surgieron algunas recomendaciones para la selección relacionadas con la necesidad o el tema de consultar sobre rotación o elección.

La ronda de consultas finalizó con una lista preliminar de miembros de cada consulta etnográfica regional. La lista reveló otra vez los problemas para determinar la representación: falta de mecanismos para incluir a los grupos pequeños, líderes politizados con sede urbana versus líderes tradicionales de base comunitaria, representación múltiple de grupos importantes a expensas de otros grupos, la representación de género y sectorial considerada como arbitraria dado el liderazgo tradicional masculino, etc. Y estaba el problema agregado de quién financiaría estas formaciones regionales etnográficas, ya que no estaban dentro de la IPRA ni de la IRR y, por lo tanto, no se les podía adjudicar un presupuesto regular.

Como todo esto tenía el estatus de recomendaciones, al concluir el término de OPAIPA se dejó a la nueva Comisión realizar el trabajo relativo a la formación de un Organismo Consultivo. Sin embargo, hasta la fecha no ha habido ningún movimiento con respecto a este asunto. La nueva Comisión declaró que su interés más urgente es la finalización de las políticas de otorgamiento de reconocimiento de

704

dominios y tierras ancestrales y de Certificados de Libre, Previo e Informado Consentimiento, y la reorganización de la NCIP.

Un factor fundamental para tener en cuenta es que la Comisión Nacional Anti-Pobreza (NAPC) tiene un consejo por cada uno de los sectores básicos, cada uno con su propio organismo consultivo y que los pueblos indígenas constituyen uno de esos sectores. Desde el mismo comienzo de la administración de Arroyo, el enfoque de la NAPC fue sincronizar y coordinar las fuerzas de NAPC y NCIP todo lo posible. Supuestamente, una de las urgentes solicitudes del Consejo Sectorial de Pueblos Indígenas de NAPC es que la NCIP convoque inmediatamente al Organismo Consultivo.

Revista y revisión de los procedimientos para obtener títulos de tierra

Una expresión concreta de la protección de los derechos de los pueblos indígenas es el respeto por la autodeterminación de los pueblos indígenas a través del reconocimiento de sus dominios y tierras ancestrales y asegurar que los proyectos que afecten sus comunidades se realicen con su libre, previo e informado consentimiento. Tal reconocimiento está entonces entre las previsiones más importantes de la IPRA, a través del procesamiento de la NCIP de Certificados de Títulos de Dominio Ancestral (CADT), Certificados de Título de Tierra Ancestral (CALT) y Certificados de Libre, Previo e Informado Consentimiento (CFPIC). Pero la primera Comisión fracasó miserablemente a este respecto. Otorgó apenas 300 CALTs y un número indeterminado de CFPICs, muchos de ellos bajo condiciones espurias. Y aunque los ex Comisionados habían aprobado nuevos CADTs en la víspera de su partida, el otorgamiento real no fue impulsado, por lo que ni un solo dominio ancestral recibió título durante su período en funciones.

Se formó un grupo de trabajo de OPAIPA para revisar y proponer una serie de procedimientos para el otorgamiento de estos certificados, para ser presentados a los nuevos comisionados de la NCIP como recomendaciones. En junio de 2001, durante la apertura del Congreso de Filipinas y el Discurso Presidencial a la Nación (SONA), la Presidenta Arroyo comprometió al gobierno a otorgar 100 CADTs a los pueblos indígenas en el plazo de un año.

Como el compromiso de SONA con los pueblos indígenas trata desesperadamente de correr contra el tiempo, los 100 CADTs parecen un sueño imposible. Con la falta de pericia técnica, y mucho menos financiación, para abril de 2002 la NCIP no había emitido ni un solo CADT. Consciente de estas dificultades, el compromiso de SONA se redujo en una reciente reunión de gabinete a 100.000 hectáreas.

705

Reorganización de la NCIP

Una de las mayores cargas para la nueva Comisión es que heredó una estructura burocrática como la de la NCIP, conocida por su arraigada ineptitud y corrupción. Para encarar esta situación, los Comisionados tuvieron que tratar muchos temas, entre ellos, su propia inexperiencia en enfrentar la burocracia gubernamental, requisitos de l a administración pública que confinan a líderes indígenas sin educación escolar formal a posiciones secundarias, un Congreso que todavía no aprobó el presupuesto de NCIP o sea que hay dinero para los salarios de los empleados pero nada para el programa de implementación, políticos regionales que presionan fuerte para apoderarse del nombramiento de posiciones, reconciliar las regiones etnográficas definidas por la IPRA con la estructura geopolítica regional en la que funciona el gobierno de Filipinas, y mucho más. Ahora que la nueva Comisión ha emitido políticas para los CADTs/CALTs/ y CFPICs, expresó que la próxima prioridad es la reorganización de la NCIP. Una Orden Administrativa de la Presidenta Arroyo suministrará apoyo adicional y servirá como base legal para la reestructuración de la NCIP.

Opiniones y enfoques divergentes

No es la intención de este artículo dar la impresión de que los pueblos indígenas de las Filipinas y sus simpatizantes apoyan todos a la IPRA y están luchando conjuntamente para su plena implementación. Existe una amplia gama de respuestas a la IPRA, que abarcan desde aquellos que creen que traiciona las convicciones indígenas relativas a la autodeterminación y el reconocimiento del dominio ancestral y los derechos a la tierra, y quienes, por lo tanto, no quieren tener nada que ver con la misma, hasta aquellos que ven sus muchos defectos pero están dispuestos a aprovechar esta apertura para promover los derechos de los pueblos indígenas dentro de la sociedad mayoritaria, y aquellos que están satisfechos con la ley y cuestionan lo que simplemente está faltando para su implementación apropiada.

Luego están las fuerzas opositoras, como las compañías mineras, madereras o la agro-industria, así como también los intereses políticos que desearían ver desaparecer a la IPRA para poder continuar con su explotación de los dominios ancestrales de los pueblos indígenas. Sólo quisieran ver el fracaso de la NCIP para que la abrogación de la IPRA pueda justificarse.

En las palabras de una persona clave dentro de OPAIPA, nunca antes los pueblos indígenas de las Filipinas tuvieron tantas oportu-

nidades dentro del gobierno: una Suprema Corte que ha fallado dos veces en favor de la IPRA; una presidenta que ha exprsado objetivos específicos para mejorar la situación de los pueblos indígenas y que está dispuesta a adjudicar un presupuesto para ello; y una Comisión cuya mayoría de miembros provienen de las filas de aquellos reconocidos por haber trabajado dentro de la sociedad civil por los derechos de los pueblos indígenas. Si la Presidenta Arroyo está haciendo esto, o no, por conveniencia política o debido a un compromiso genuino con la autodeterminación de los pueblos indígenas, no viene al caso, si uno considera la situación como una presentación a los pueblos indígenas de más opciones y oportunidades dentro de la sociedad dominante. En la visión común de autodeterminación de los pueblos indígenas, todas estas condiciones conforman sus esperanzas y frustraciones. En este momento, la NCIP está siendo observada de cerca por todas las fuerzas. Es un factor crítico para determinar si la esperanza se transformará otra vez en frustración.

La crisis actual: militarización y agresión desarrollista

Entretanto, mientras que todo este planeamiento y preparación estaba en marcha, los pueblos indígenas no tuvieron respiro ante la agresión del desarrollo u otras formas de opresión. Se perpetraron muertes y masacres contra las comunidades indígenas en las provincias de Bukidnon, Zamboanga y Agusa, en Mindanao. Existe una creciente preocupación por la cantidad de violaciones de derechos humanos contra los pueblos indígenas, que alarmó incluso a la Comisión de Derechos Humanos de la ONU.

En septiembre de 2001, la Presidenta Macapagal Arroyo emitió la Orden Ejecutiva No. 18 sobre la integración del Ejército de Liberación de los Pueblos de la Cordillera (CPLA) a la Fuerzas Armadas de las Filipinas (AFP). Desde entonces, unos 264 miembros del CPLA se han convertido en parte de las AFP, mientras que otros 528 se integraron a las Unidades Geográficas de Fuerzas Armadas Civiles (CAFGU). Conforme al gobierno, esta orden tiene la intención de lograr la paz en la Cordillera y ha adjudicado 60 millones de pesos para el proceso de integración.

Grupos orientados a la causa y defensores de derechos humanos denunciaron esta medida como un acto de grave injusticia para los pueblos de la *Cordillera*. Elementos del CPLA han sido responsables del asesinato político de varios líderes y miembros de la Alianza de Pueblos de la Cordillera (CPA) y personal de ONGs de desarrollo entre 1987 y 1992. Varios líderes y miembros del CPLA han sido también identificados en actividades criminales como robos y extor-

707

sión. Las familias de las víctimas de las atrocidades del CPLA sienten que el nuevo gobierno, en vez de brindar justicia, ahora ha consentido a este grupo miliciano, agregando más huevos podridos a la institución militar. Muchos temen que esto conduzca a más inestabilidad que paz en la región.

Las operaciones militares en el interior de la Cordillera condujeron a la brutal ejecución del Sr. Johnny Camareg, un agricultor de 55 años de Betwagan, Sadanga, Provincia de la Montaña, el 9 de agosto de 2001. Tres niños de Tocucan, Bontoc, también fueron víctimas del fuego indiscriminado cuando fueron confundidos con fuerzas rebeldes mientras que estaban recogiendo leña en el bosque. Además, una estudiante de 17 años fue violada por un cierto Sargento Joel Torallo, basado en Besao, Provincia de la Montaña. La unidad militar involucrada en todas estas atrocidades es la 22ª Fuerza Especial de las Fuerzas Armadas de las Filipinas.

Se ha registrado un alarmante aumento de conflictos tribales en Kalinga y Provincia de la Montaña desde el año 2001 hasta el presente. En particular, la prolongada disputa fronteriza entre los betwagan y bugnay llevó al inicio de una guerra tribal a escala total en diciembre de 2001. Esta escalada de la guerra tribal fue parcialmente instigada por elementos del CPLA basados en Bugnay. Cinco individuos ya han sido muertos y tres heridos como resultado de este conflicto. Otros conflictos están relacionados con la delimitación, la competencia por el uso de recursos de bosques y fuentes de agua e incidentes criminales. La Organización Bodong Pongors (BPO) de ancianos tribales y la Alianza de los Pueblos de la Cordillera han realizado una serie de talleres con los ancianos para el arreglo pacífico de los conflictos tribales y han hecho un llamado por la detención de las guerras tribales.

Los pueblos indígenas de Itogon, especialmente los ibaloy de Dalupirip, siguen muy preocupados porque la construcción de la Represa San Roque debe finalizarse para mediados de 2002. En junio de 2001, una evaluación independiente de la NCIP sobre la construcción de la represa confirmó que los pueblos indígenas afectados por el proyecto no habían otorgado el Libre, Previo e Informado Consentimiento (FPIC). El FPIC es un requisito legal de la Ley de Pueblos Indígenas (IPRA). El 15 de marzo de 2002, la Alianza Itogon Inter-Baranggay (IIB-A) presentó una petición a la NCIP para que emitiera una orden para detener y hacer desistir de la actual construcción de la Represa San Roque. Las comunidades afectadas han estado abogando ante el Banco Japonés para la Cooperación Internacional, financiador del proyecto de represa, para que retire su apoyo financiero del proyecto.

La Lepanto Consolidated Mining Company está dispuesta a expandir sus operaciones mineras en Mankayan hacia Bakuna y Buguias

708

en Benguet, y Tadian, Bauko y Bontoc, en la Provincia de la Montaña. Los residentes de Colalo, Mankayan están protestando frente a la expansión de los desechos del complejo de la represa Lepanto porque cubrirá sus granjas y parcelas residenciales. Mientras tanto, los campesinos que viven más abajo del lugar de desechos del complejo de la represa creen que la filtración masiva en el río Abra, y las inundaciones periódicas de sus riberas, se deben al acumulamiento de desechos de Lepanto en el río. Ahora hay una creciente oposición a la operación de Lepanto por parte de los agricultores a lo largo del río Abra, y de los que están en su área de expansión.

La situación en Palawan

El mayor desafío que enfrentan las organizaciones indígenas y ONGs en Palawan en la actualidad es el establecimiento de una refinería de níquel por río Tuba Nickel Mining Corp. (RTNMC). Las actividades mineras de RTNMC están actualmente localizadas en la municipalidad de Bataraza. La compañía proponente, RTNMC, intenta maximizar sus operaciones utilizando los existentes yacimientos de níquel de bajo grado actualmente depositados en sitios de desecho abiertos dentro de su concesión. Esto justificaría el establecimiento de una planta de refinación de níquel, de una planta asistente de producción de sulfuro de hidrógeno y operaciones de extracción de piedra caliza, con consecuencias desastrosas para los medios de subsistencia de varias comunidades indígenas pälawan. Entre las áreas bajo seria amenaza están: Sitio Gutok, Sarung y Kulantuöd, Barangay Iwahig y el mismo río Tuba.

Entre 2001/2002, organizaciones no-gubernamentales de Palawan, encabezadas por PNNI (la Red de ONGs de Palawan, Inc.), lanzaron una gran lucha contra RTNMC. BPP (Bangsa Palawan, Philippines, Inc.) y ELAC (Centro de Asistencia Legal Ambiental) obtuvieron pruebas fotográficas de las prácticas destructivas para el medio ambiente de RTNMC. Del 9 al 15 de enero de 2001, se realizaron diversas consultas entre las comunidades indígenas afectadas y las ONGs locales. Como resultado, los representantes indígenas firmaron una petición conjunta contra RTNMC que fue presentada por PNNI al Departamento de Medio Ambiente y Recursos Naturales (DENR). Parecería que la solicitud de la planta metalúrgica hidrotermal fue favorablemente aprobada por el Consejo de Palawan para el Desarrollo Sostenible (PCSD) en diciembre y ahora espera su aprobación final del DENR.

709

Fuentes

HAPIT- Publicación Oficial de CPA.
Novellino, Dario. 2000[a]. "Forest Conservation in Palawan" in *Philippine Studies* 48: 347-72
Novellino, Dario. 2000[b]. "Recognition of Ancestral Domain Claims on Palawan island, the Philippines: Is there a Future?" in *Land Reform: Land Settlement and Cooperatives 2000/1*, Organización de la Alimentación y la Agricultura (FAO) de las Naciones Unidas.

TIMOR LOROSA'E (TIMOR ORIENTAL)

El 20 de mayo de 2002, Timor Oriental se convertirá finalmente en Timor Lorosa'e –la Tierra del Sol Naciente- una nación completamente independiente y miembro pleno de la ONU.

El territorio de Timor Lorosa'e está constituido por cuatro partes: la tierra firme, es decir, la mitad oriental de la isla de Timor, 16.384 kilómetros cuadrados; el enclave de Oecusse, que está ubicado en la costa norte de Timor Occidental (Indonesia), 2.461 kilómetros cuadrados; la isla de Atauro, a 23 kilómetros de la costa norte de Timor Oriental y su capital Dili; y la diminuta isla de Jaco, de 8 kilómetros cuadrados, al este de la punta oriental de la tierra firme. La población total se estima en unos 800.000 individuos.

Después de casi 24 años de ocupación indonesia, y profundamente marcado material y espiritualmente por el desencadenamiento de la violencia a continuación del referéndum organizado por la ONU en agosto de 1999 (ver *El Mundo Indígena 2000-2001*), Timor Oriental ha sido administrado desde octubre de 1999 por la Administración Transitoria de las Naciones Unidas en Timor Oriental (UNTATE) para prepararse para la independencia.

Elecciones exitosas

El primer paso fue las elecciones para la Asamblea Constituyente, que tuvo lugar el 30 de agosto de 2001, siendo las primeras elecciones del país desde el fin del dominio indonesio.

710

Fretilin, el Frente Timorense para la Liberación Nacional, el partido que declaró la independencia de Timor Oriental en 1975 y la fuerza mayor en particular de la larga lucha contra la ocupación, ganó el 57 por ciento de los votos, obteniendo 12 de los 13 escaños de los distritos y 43 de los 75 escaños nacionales. Sin embargo, los resultados fueron menores que el 85-90 por ciento que el partido había previsto.

Ahora hay doce partidos representados en la Asamblea Constituyente de 88 escaños. Esto refleja una considerable apertura e interés públicos en los partidos más nuevos. El Partido Democrático (PD) y el Partido Socialdemócrata tuvieron una fuerte votación en muchos distritos y ahora tienen el segundo bloque de escaños después del Fretilin, con 7 y 6 escaños respectivamente. La Asociación Socialdemócrata de TIMOR (ASDT) también dispondrá de seis escaños.

Fretilin tenía esperanza de que obtendría una mayoría suficientemente amplia para poder redactar la constitución en la asamblea. Dada la cantidad de votos no-Fretilin, esa estrategia no es tan fácil ahora. Al menos 60 de los 88 miembros de la Asamblea deben aprobar la constitución para que sea adoptada.

Legados del pasado y desafíos para el futuro

Durante 24 años, los timorenses orientales tuvieron un problema dominante: cómo liberarse de los indonesios. Ahora este problema desapareció pero desde el establecimiento de la Segunda Administración Transitoria en septiembre de 2001, la nueva nación enfrenta los legados del pasado y los desafíos del futuro.

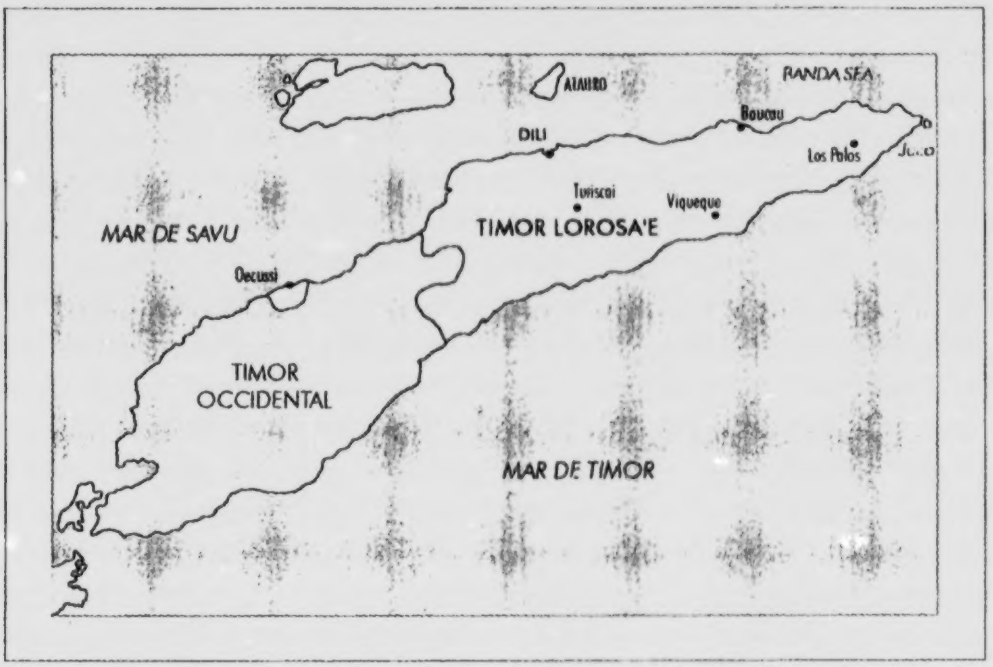
Relaciones con Indonesia

Las relaciones con Indonesia están marcadas por la continua crisis de los refugiados: aproximadamente un décimo de la población de Timor Oriental –o sea unos 80.000 refugiados- siguen retenidos en campos de refugiados controlados por el ejército indonesio y la milicia, principalmente en Timor Occidental indonesio.

Otro tema importante es la seguridad fronteriza. Las milicias, respaldadas por el ejército, siguen desestabilizando a Timor Oriental, lanzando incursiones a través de la frontera desde sus bases en los campamentos de refugiados de Timor Occidental. Muchos líderes milicianos dicen que planean aumentar las hostilidades cuando la ONU reduzca su presencia para mantener la paz en Timor Oriental durante 2002-2003.

Los grupos Red de Acción de Timor Oriental (ETAN) y Red de Derechos Humanos Indonesia (IHRN) también han exhortado a la

711



administración de Bush para que no fortalezca sus vínculos con el ejército indonesio en reacción al ataque del 11 de septiembre contra los EE.UU. Los grupos dicen que una renovación de las relaciones militares con Indonesia haría retroceder los esfuerzos reformistas y democráticos en este país y socavaría la seguridad de Timor Oriental. Los EE.UU. han retirado la mayor parte de la asistencia militar a Indonesia desde que el ejército indonesio y las milicias arrasaron Timor Oriental en septiembre de 1999, después de la abrumadora votación por la independencia.

Reconstrucción y desarrollo

El país enfrenta una enorme tarea de reconstrucción. La represalia indonesia en 1999 dejó la infraestructura (caminos, clínicas sanitarias, hospitales, escuelas, etc.) en muy malas condiciones y muchas casas particulares están en ruinas. La población perdió sus medios de subsistencia. Los campos y los cultivos fueron quemados, el ganado fue muerto, las herramientas robadas y los equipos fueron destruidos. Casi todo el mundo debe encontrar capital, equipos y reservas necesarios para volver a comenzar.

Hay una pobreza extendida e insuficientes servicios de salud, especialmente en las áreas rurales donde vive la mayoría de la población. Los índices de mortalidad maternal e infantil son elevados. Las nuevas cifras publicadas por la Organización Mundial de la Salud

BEST COPY AVAILABLE

(OMS) a comienzos de 2002 muestran que muere el doble de mujeres en el parto en Timor Oriental que en cualquier otra parte de Asia Oriental y el Pacífico Occidental. Según la organización de la salud, hay sólo 196 parteras para atender a una población de 800.000 personas.

Los índices de analfabetismo –particularmente entre las mujeres- son muy altos. Más de 147.000 niños asisten actualmente a escuelas primarias en los 13 distritos del país. No obstante, la ausencia de un programa de estudios estándar, la carencia de maestros capacitados y de infraestructura son importantes problemas que enfrenta la educación primaria. Se necesita un nuevo sistema educativo y nuevos libros escolares porque la enseñanza, hasta 1998, estaba basada en material indonesio.

El tema de la lengua

Uno de los mayores desafíos se encuentra en la elección de una lengua para Timor Oriental: se usa y/o se prefiere al menos cuatro lenguas y se habla más de treinta dialectos. Aunque el portugués fue elegido como la lengua oficial del país venidero, para ser usado en todas las transacciones oficiales, la vasta mayoría de la población no lo habla fluidamente, y el tetun (un idioma indoeuropeo similar al malayo pero con fuertes influencias portuguesas y de otras partes) sigue siendo la *lingua franca* nacional, la que habla la mayoría de los timorenses orientales en su casa junto con sus dialectos provinciales. Aunque este pueda no ser un problema enorme, se agrega una dificultad mayor por el hecho que, como todos los trámites oficiales y la enseñanza han sido realizados en malayo (el llamado bahasa indonesia) durante los últimos 26 años, ésta sigue siendo la lengua a que la mayoría de los funcionarios estatales están acostumbrados, incluyendo, por supuesto a los maestros – y sus libros de texto. Reemplazarlo por el portugués a corto plazo sería imposible, mientras que reemplazarlo por el tetun será impracticable, ya que el tetun no ha sido desarrollado completamente como idioma.

Muchos de los timorenses orientales todavía dudan de la efectividad del portugués como lengua oficial. Aunque la mayoría de los líderes –especialmente ex exiliados- no soñarían con otra alternativa, muchos de los compatriotas con menos escolaridad todavía pueden favorecer en cambio el uso práctico de la lengua indonesia. Unos pocos querrían ver que el tetun se transformara en un lenguaje escrito para reemplazar a los otros dos. Para complicar aún más las cosas, el inglés se ha convertido en el idioma de moda de la juventud, después de casi tres años de presencia masiva de personal de la ONU (9.000 en las Fuerzas de Paz; 2.000 en la administración civil) y de las

713

organizaciones no-gubernamentales. El inglés es el idioma de trabajo de UNTATE.

Las mujeres se hacen notar

Las elecciones de la Asamblea Constituyente marcaron la entrada de mujeres en la política timorense oriental. En general, las mujeres obtuvieron 24 escaños en la asamblea pero sólo 23 de ellas asumieron sus puestos. Los grupos por los derechos de las mujeres en Timor Oriental aclamaron el acontecimiento y dijeron que su próximo objetivo sería la incorporación de una carta de los derechos de la mujer en la constitución.

Durante muchos años, las mujeres de Timor Oriental no tenían permitido expresarse, ni se les permitía organizarse. Una dictadura extranjera brutal y foránea regía sus vidas. Ahora pueden expresarse, ahora pueden organizarse, y ahora participarán en la elaboración de la futura constitución de su país. Pero sus problemas están lejos de ser superados.

Muchas están profundamente traumatizadas por el abuso sexual y el tratamiento degradante que sufrieron durante la ocupación militar indonesia de 1975 a 1999. Muchas fueron además estigmatizadas socialmente, si la violación había producido un niño, y el niño también era rechazado por la sociedad – además de ser huérfano de padre.

Como resultado de la política de planificación familiar especial de Indonesia -el programa KB (*Program Keluarga Berencana*)- muchas mujeres timorenses fueron esterilizadas cuando iban a clínicas administradas por el estado, frecuentemente sin su conocimiento ni consentimiento. El propósito de esta política era cambiar la composición demográfica de la población, manteniendo bajo el número de timorenses orientales y trayendo a más indonesios de Indonesia a Timor Oriental como "transmigrantes".

Otro problema enfrentado por las mujeres timorenses orientales es la relación desigual de género. En la sociedad de Timor Oriental, la tradición y el derecho consuetudinario favorecen a los hombres en desmedro de las mujeres. Entre las prácticas que las activistas del movimiento por los derechos de las mujeres querían eliminar está el sistema tradicional de la dote que, dicen, refuerza el sistema patriarcal de la sociedad.

Conforme a Manuela Leong Pereira, la directora de Fokupers, el Foro de Comunicación de las Mujeres Timorenses Orientales, la violencia doméstica ha existido en Timor Oriental durante largo tiempo, aunque muy escondida de la vista o discusión pública.

714

Nosotras leemos raramente sobre la violencia no-pública, como la que tiene lugar dentro del hogar que es realmente dominante. Este silencio es sumamente peligroso. Timor Oriental ha heredado el código legal de Indonesia en el que no hay ninguna referencia específica a la violencia doméstica. La ley también deber dar protección a las mujeres que enfrentan esta violencia.

Preparando el futuro

La Segunda Administración Transitoria estableció una Comisión sobre Planeamiento para dirigir la preparación del Plan Nacional de Desarrollo de manera que esté pronto antes del día de la independencia, el 20 de mayo de 2002, como una de sus primeras acciones. Uno de sus componentes es la Comisión Consultora de la Sociedad Civil sobre Desarrollo (CCCSD).

El proceso para la preparación de un Plan Nacional de desarrollo tiene dos objetivos centrales: (1) reflejar plenamente las necesidades y aspiraciones del pueblo timorense; y (2) centrarse en un plan de acción para reducir la pobreza. La preparación del plan será supervisada por la Comisión de Planeamiento que está constituida por cinco miembros del gobierno, cuatro miembros no-gubernamentales que representan la CCCSD, un secretario y un Asesor para el Desarrollo.

La CCCSD es responsable de asesorar sobre cómo los elementos institucionales de la sociedad civil, tradicionales y modernos, pueden usar sus redes para maximizar la participación del pueblo timorense oriental en el proceso de consulta.

El resultado más importante de la consulta será la compilación de la visión del pueblo para Timor Oriental a mediano plazo (2002-2005) y a largo plazo (2020) que, a su vez, se espera incorporar en el plan final para el desarrollo de la nación durante las próximas dos décadas.

Fuentes

Retbøll, Torben. 2001. Informe de Viaje de Red de Contactos. IWGIA

Retbøll, Torben. 2002. "The Women of East Timor". Documento presentado en la Conferencia sobre Timor Oriental, Estocolmo, Suecia, 21 de mayo de 2002.

Pacific News Bulletin. Vol.16, 9 (septiembre 2001), Vol.17, 1 (enero 2002).

Giuliano, Maurizio. 2002. C omunicación personal.

Para más información se puede consultar:

- Timor Aid: www.timoraid.org
- East Timor Action Network (ETAN): www.etan.org
- UN Transitional Administration in East Timor (UNTAET): www.un.org/peace/etimor/etimor

715

INDONESIA

Las grandes esperanzas de reformas fundamentales después de la caída del Nuevo Orden de Soeharto no se materializaron en forma general, ya que los intereses creados dentro de la burocracia y el sistema demostraron ser capaces de protegerse a sí mismos. No obstante, el fin del Nuevo Orden y la represión, que fue su característica, condujo a libertades sin precedentes en áreas claves como la prensa y la organización política. Esto también brindó una nueva oportunidad a los pueblos indígenas de todas las regiones de Indonesia para comenzar a reclamar sus derechos. La reunión de marzo de 1999 en Yakarta de representantes de todo el país fue un acontecimiento clave a este respecto. El resultado más importante de esta reunión fue la formación de una red nacional de organizaciones llamada AMAN, *Aliansi Masyarakat Adat Nusantara* o la Alianza de los Pueblos Indígenas del Archipiélago.

Más poder a las regiones - ¿más poder a los pueblos indígenas?

La descentralización, que fue realizada enérgicamente, fue una reforma muy significativa. Aprobada durante el mandato del Presidente Habibie, la Ley No. 22 de 1999 sobre Gobierno Regional reemplazó las dos leyes del Nuevo Orden sobre gobierno regional y aldeano de 1974 y 1979[1]. Fue una medida de pánico en un momento de creciente presión de las regiones, no sólo por la autonomía sino incluso por un estado federal más laxo, o en algunos casos, directamente por la secesión. Estas presiones fueron una reacción a décadas de represión y abuso por parte del estado centralizado y autoritario liderado por Soeharto, aunque las fuerzas más importantes que sustentaban el reclamo por una descentralización radical no estaban basadas en la sociedad civil (que tuvo que sufrir la mayor parte de las políticas de represión) sino en las élites locales, muchas de ellas profundamente arraigadas en las viejas estructuras de poder del régimen de Soeharto. Aunque el discurso por la autonomía regional de los movimientos de "trabajadores" liderados por estos círculos exigía el reclamo de los "derechos tradicionales", los grupos étnicos que querían liberar eran principalmente los grupos locales dominantes, no las comunidades indígenas frecuentemente política y socialmente marginadas. Toda discusión de los méritos y defectos de la "autonomía regional" en Indonesia, por lo tanto, debe tomar en cuenta que la categoría oficial (y, por cierto también la del movimiento de ONGs) de derechos basa-

dos en el *adat* (tradicionales) es mucho más amplia que la noción generalizada de derechos *indígenas* en el discurso legal internacional.

La nueva ley tuvo bastante alcance en cuanto a la devolución de poder a los distritos (*kabupaten*), aunque los poderes otorgados a las provincias fueron rigurosamente circunscriptos, relacionados solamente con asuntos administrativos no asignados a los distritos, o a ocuparse de asuntos transfronterizos. Como principal beneficiario de la descentralización, el distrito se transformó en una entidad autogobernante (a diferencia de antes, cuando era una unidad administrativa sometida a la provincia o el estado), con poderes potencialmente amplios para manejar sus tierras y recursos naturales así como cobrar impuestos (dispuesto por una ley distinta). Como reflejo del considerable crecimiento demográfico y económico de las décadas precedentes y para volver a políticas autónomas preexistentes del período colonial y precolonial, muchos distritos del Nuevo Orden fueron divididos en entidades más pequeñas, llevando al gobierno autónomo significativamente más cerca de las comunidades locales.

Esas comunidades locales, p. ej., aldeas, fueron en sí mismas también reorganizadas en gran medida por la nueva ley. En un tono muy diferente al de la ley de 1979, la nueva ley declara que la aldea tiene "autoridad para regular y manejar los intereses de la comunidad local sobre la base de sus orígenes y costumbres y tradiciones locales que son reconocidos dentro del sistema del gobierno nacional" (Artículo 1)[2]. Aunque la autoridad de la aldea está limitada solamente a aquellas funciones que todavía no han sido acordadas al distrito o a los gobiernos provinciales, al menos la nueva ley hace una referencia explícita a las tradiciones culturales y políticas indígenas. Además de un jefe aldeano directamente electo (Artículo 95), la ley también prevee la formación de un Consejo Representativo Aldeano (*Badan Perwakilan Desa)* cuyos miembros deben ser electos por los aldeanos y entre ellos mismos. Los deberes de los representantes son proteger las costumbres y tradiciones (*adat istiadat*), elaborar las regulaciones aldeanas, ser conductor de las aspiraciones de la comunidad y supervisar el funcionamiento de los asuntos aldeanos (Artículo 104).

Además, se especifica que el gobierno del distrito y/o terceras partes que están planeando actividades en el territorio de una aldea tienen el deber de involucrar al gobierno aldeano y al organismo representativo en la planificación, implementación y monitoreo (Artículo 110). También se establece que las ordenanzas del distrito deben reconocer y respetar los derechos, orígenes y las costumbres y tradiciones de la aldea (Artículo 111).

Es de destacar que en las enmiendas a la Constitución, que fueron aprobadas en el año 2000, el capítulo Gobierno Regional fue suma-

mente ampliado y clarificado. En el actual contexto, la última cláusula es especialmente interesante:

> *El estado reconoce y respeta las comunidades de ley adat así como sus derechos tradicionales en la medida en que sigan siendo una realidad viva y estén de acuerdo con el desarrollo de la sociedad así como con los principios de la República de Indonesia, en tanto que estado unitario, tal como son regulados por las leyes*[3].

Aunque los derechos tradicionales están por lo tanto sujetos a ciertos condicionamientos que pueden tener el potencial de anularlos, el nuevo y explícito reconocimiento de tales derechos en la Constitución brinda una base importante para argumentar su continua relevancia en una situación dada.

Otra extensa adición a la Constitución de gran importancia para los pueblos indígenas es un nuevo capítulo sobre Derechos Humanos. Las secciones particularmente importantes son el Artículo 281 (2): "Todos tienen derecho a no ser tratados en forma discriminatoria por cualquier causa y tienen derecho a protección contra tal tratamiento discriminatorio", y (3) "La identidad cultural y los derechos de las comunidades tradicionales deben ser respetados de acuerdo con la evolución de la época y de la civilización"[4].

Aunque la nueva legislación sobre autonomía regional y local ha sido criticada por sus ambigüedades y por la mala calidad de su redacción y, por supuesto, por ir demasiado lejos en desmantelar el poder estatal centralizado en la opinión de algunos, ha alterado claramente en forma sustancial el contexto del mantenimiento de los derechos locales o tradicionales. Esto se hace vigente especialmente para los grandes grupos étnicos que constituyen mayorías en sus

BEST COPY AVAILABLE

áreas y cuyos miembros controlan legislaturas y administraciones a nivel de distrito. Para tomar un ejemplo, los malayos de la provincia de Jambi o de Riau, ya que estén considerados como vinculados a la tradición o no, no sólo están en control total de las instituciones gobernantes en las aldeas donde residen sino también en los niveles de distrito y de provincia, donde todos los funcionarios, incluyendo el Gobernador, ahora son reclutados preferentemente sobre la base de su afiliación étnica y local. Hay que comparar esto a la situación de hace apenas cuatro años, cuando todas estas instituciones estaban subvertidas por el gobierno central con el propósito de obtener acceso y explotar tierras y recursos. La cuestión, por supuesto, es hasta qué grado este vendaval de cambios momentáneos también beneficia a los grupos étnicos cuya posición de negociación política ha sido tradicionalmente, y lo sigue siendo, la más débil – los pueblos indígenas, y entre ellos en particular aquellos que nunca produjeron ningún tipo de clase media educada que pudiera articular sus demandas.

Minorías entre minorías: el problema especial de las comunidades indígenas marginales

El cambio paradigmático de un estado nacional unitario a la autonomía regional todavía no ha tratado el problema especial de proteger a los pueblos indígenas, especialmente los muy pequeños, de la extinción cultural y la desintegración social y económica. Bajo el Nuevo Orden, algunos de ellos eran objeto de asistencia gubernamental, provista por el programa del Ministerio de Asuntos Sociales para tribus aisladas. En la práctica, lo que significaba era el reasentamiento que, en vez de resolver problemas básicos, especialmente como eran considerados por los mismos grupos, causó alteraciones y expuso a los grupos concernientes a riesgos incrementados de marginación, al desarraigarlos de sus tierras y negarles el acceso a sus medios de subsistencia.

Con la descentralización, el papel del Ministerio de Asuntos Sociales ha sido sumamente disminuido; bajo el Presidente Abdurrahman Wahid fue incluso abolido temporalmente. Su rol con respecto a las comunidades tradicionales está reducido a elaborar directivas generales para los distritos, que ahora tienen autoridad sobre política, adjudicación de fondos y suministro de asistencia a las "comunidades *adat* aisladas" (*masyarakat adat terpencil*), como son ahora llamados estos grupos. El recientemente rebautizado Directorado para Comunidades *Adat* Aisladas ha adoptado una terminología progresista en sus directivas generales, siendo "apoderamiento" una muletilla clave[5]. Pero las directivas técnicas que son distribuidas a las autoridades regionales difieren un poco en sustancia del enfoque anterior,

719

siendo el reasentamiento todavía un pílar para el cambio[6]. Queda ahora por verse qué harán los distritos con estas minorías indígenas.

Las pequeñas minorías indígenas están enfrentadas con un problema particular al estar rodeadas por mayorías étnicas, que también pueden reclamar estatus tradicional y los derechos especiales conexos, y que ahora han sido puestas en control del manejo general de recursos a nivel de distrito a través de su control del gobierno *kabupaten*. Debería tenerse en cuenta que las relaciones interétnicas han sido marcadas frecuentemente por la explotación y la discriminación por parte de los grupos dominantes regionalmente. Un ejemplo son los habitantes de los bosques, agricultores rotativos o cazadores-recolectores, como los kubu o los orang rimba, los talang mamak, los sakai, los punan, etc. Por lo tanto, parece que las comunidades indígenas tradicionalmente marginadas, especialmente aquellas que tienen poco acceso incluso a las instituciones políticas en el ámbito aldeano o que están completamente fuera de ellas, como los orang rimba, tienen una necesidad particular de atención y apoyo de defensoría. Los que desean apoyar los derechos de los pueblos indígenas deberían entonces estar bien asesorados para aclarar las prioridades y estrategias para poder hacer un aporte donde más se necesita verdaderamente o, al menos, para evitar contribuir inadvertidamente a la marginalidad de los grupos más pequeños[7].

Gobierno local y aspiraciones indígenas

Como la devolución del poder del nivel nacional al de distrito y –en menor grado- al de gobierno provincial ha sido lenta como para tener efecto sobre las vidas aldeanas, muchas comunidades campesinas e indígenas han comenzado a cuestionar la relevancia del estado en general en sus vidas. Los pueblos indígenas, que estaban entre estos grupos que sufrieron más en las décadas de mala gobernación, han comenzado a responder críticamente a la política de Autonomía Local. Hoy, la política es considerada cada vez más como un nuevo ámbito para el estado para expandir su control sobre el pueblo, en vez de como una alternativa al gobierno centralizado previo y la subversión de las instituciones tradicionales a nivel aldeano en las que se inmiscuyó. Esas comunidades indígenas, aliadas bajo AMAN, han estado intentando presionar a los gobiernos locales a considerar aspectos cruciales de la gobernación indígena y los sistemas sociales, en un esfuerzo para lograr que el gobierno aldeano sea más positivo con respecto a las necesidades locales. Exigen que la legislación en el ámbito local debería reconocer el derecho de los pobladores locales a ser gobernados por instituciones tradicionales *adat*.

720

En algunas regiones se han elaborado proyectos de Reglamentaciones Locales, como en Kalimantán Occidental y Bali sin que, sin embargo, todavía hayan sido puestos en vigor. No obstante, ahora están vigentes 13 Reglamentaciones Locales en Lampung Occidental, que establecen unidades de gobierno local y prácticas de gobierno que están de acuerdo con las instituciones y prácticas indígenas tradicionales, y que han vuelto a trazar los límites administrativos conforme a los territorios comunales tradicionales. Por ejemplo, la Reglamentación Local de Lampung Occidental No. 02/2000 reemplaza las entidades *desa* y *kelurahan* del Nuevo Orden con sus equivalentes tradicionales, *pekon* y *pertain*. En forma similar, las Reglamentaciones Locales en Toraja, en Sulawesi del Sur, establecieron la unidad política local tradicional, *lembang*, como base del gobierno local, mientras que Bali introdujo *desa pekraman* para la misma función.

El hecho que, gradualmente, la diversidad cultural se está reafirmando en la forma de instituciones de gobernación local resurgentes es prueba de una creciente presión – de las bases y la opinión pública- por el reconocimiento de sistemas sociales y estilos de vida indígenas. Sin embargo, a este respecto, es importante que el movimiento indígena mantenga las cosas en perspectiva y comprenda que todos los estados del mundo han tratado periódicamente de ganar credibilidad y lealtad mediante la adopción de terminologías locales, y que el riesgo de que el estado trate de manipular la gobernación indígena y los sistemas de leyes consuetudinarias es muy real. Incluso con la descentralización, que es la nueva palabra de moda, los chances de que el estado comience a rearticular la sociedad local son mucho menos probables que lo contrario – que la sociedad local se continúe restaurando a la imagen del estado.

Claramente, la reintroducción de los sistemas de gobierno indígenas como forma de hacer retroceder el impacto de la homogenización impuesta por el estado, que ha destruido muchos sistemas sociales autónomos en Indonesia, es un esfuerzo que merece el apoyo de los indígenas indonesios. Sin embargo, al mismo tiempo, las organizaciones indígenas deberían precaverse de los intentos del estado para infiltrar los sistemas de gobierno indígenas con sus organismos, debilitándolos y, finalmente subvirtiéndolos. Por eso, en algunos distritos provinciales, el *bupati* (Jefe del Distrito) ha sido promovido a una posición de autoridad especial en los sistemas indígenas de gobernación. Esos acontecimientos tienen el potencial de destruir el logro de la meta de la autonomía para las comunidades indígenas. A ese respecto es instructivo dar una mirada a la forma en que los gobiernos locales manejan los recursos naturales. Las industrias extractivas que explotan los recursos forestales no han sido refrenadas por los nuevos detentadores del poder. Por el contrario, los bosques son consi-

721

derados por la mayoría de los gobiernos locales como una fuente primaria de ingreso, así que las compañías privadas y semiprivadas de recursos forestales han permanecido pero los ingresos generados por gravarlas ahora están enriqueciendo a las élites locales en vez de a las élites nacionales como sucedía anteriormente.

Las comunidades locales indígenas han sido tradicionalmente entidades autónomas, social, política y legalmente, y en muchos casos todavía lo son. Igual que el estado y las unidades que éste inviste con funciones administrativas, la comunidad tiene un territorio, un pueblo y un sistema de gobierno necesarios para mantener relaciones pacíficas entre sus miembros. AMAN, la federación nacional de pueblos indígenas indonesios, siempre ha dejado en claro que la autonomía local no puede significar nada menos que autonomía a nivel de comunidades – a diferencia de, p. ej., un distrito o una provincia. Este concepto fue formulado en el Taller y Seminario de AMAN en Liwa, Lampung Occidental, de 10 al 12 de enero de 2002, antes de la Tercera Reunión del Consejo Nacional de AMAN. La autonomía indígena, según lo que entiende AMAN, es un conjunto de derechos y los componentes particulares no pueden ser separados. Los derechos implican el derecho a definir las unidades territoriales relevantes usadas en la administración de la población local, el derecho a controlar el manejo de los recursos naturales incluidos en las mismas y el derecho a aplicar el derecho consuetudinario a una amplia gama de asuntos legales. Esa autonomía está finalmente enraizada y legitimada por experiencias locales específicas y valores culturales aldeanas, que tienden a diferir de una comunidad a otra. Esta es la razón de por qué vemos el resurgimiento de diferentes sistemas políticos locales, como el *binua/banua* en Kalimantán, el *huta* de Tapanuli, *gampong* y *mukim* en Aceh, *nagari* en Sumatra Occidental (Minangkabau), *marga* en Sumatra del Sur, *pekon* en Lampung, *negeri* en Minahasa, *kampung/ngata/boya* entre los kaili de Sulawesi Central, *lembang* en Toraja, *pamusungan* en Lombok Occidental, *boa/adak* en Manggarai (Flores), *yo* en Papúa (Sentani), etc.

Cambio legislativo en el ámbito de las políticas de manejo de recursos naturales

Otro importante acontecimiento político fue la aprobación del Decreto No. IX/MPR/2001 por la Asamblea Consultiva del Pueblo (la cámara alta en el sistema "parlamentario" indonesio), que fue promulgada el 9 de noviembre de 2001. Fue la primera vez que el estado aprobó una reglamentación general que ofrece un espacio para la reforma agraria y un manejo de recursos equitativo, orientado al pueblo. La significa-

722

ción del Decreto deriva del hecho que la reforma agraria y el manejo de recursos naturales están ahora, y para siempre, firmemente ubicados en la esfera política y no se consideran ya más como elementos de disputa en la esfera pública. Es también significativo que el decreto fue aprobado explícitamente como una contribución a la democratización, el imperio de la ley y la reducción de la pobreza. El Decreto también relativizó el principio del estado que ejerce el control sobre "... tierra, agua y sus contenidos de recursos naturales", especificando que este control estatal debe ser ".... dedicado a la prosperidad del pueblo", como lo establece la Constitución de la República Indonesia.

Además, el Decreto es importante porque enumera los principios que se supone gobiernan las políticas revisadas del estado sobre silvicultura, minería y agroindustria, así como también la implementación de la reforma agraria. Los doce principios tratan los derechos humanos, la diversidad cultural, la democracia y la participación popular de base amplia en los procesos políticos, igualdad de género, sostenibilidad de los recursos naturales y uso de los recursos agrarios, funciones sociales y ecológicas del manejo de los recursos naturales y protección para los pueblos indígenas y sus culturas.

Sin embargo, es por lo menos dudoso que la actual administración política madure en la voluntad política para apoyar el decreto mediante la elaboración de instrumentos políticos bien pensados para traducir una mera declaración de intención en práctica política. El inciso (j) del Artículo 4 del Decreto insiste que las futuras políticas sobre manejo de recursos naturales y reforma agraria tienen que "reconocer, respetar, y proteger los derechos indígenas y la diversidad cultural", pero hasta ahora no ha habido signos de que esta u otra pomposa declaración será alguna vez transformada en leyes. Esto es doblemente engorroso porque el Artículo 6 y 7 del Decreto enfatizan la importancia de una legislación de seguimiento en forma de regulaciones orgánicas derivadas del mismo. Los Artículos 6 y 7 confían al Presidente y a la Cámara de Representantes la elaboración de iniciativas legislativas con respecto a la reforma agraria y las políticas de recursos naturales en el "dominio público" (bajo esa categoría todavía están los territorios indígenas y los bosques dentro de ellos, según la opinión oficial).

El Decreto No. IX/MPR/2001 no sería la primera Acta, Decreto o Ley importante que muriera lentamente debido a que el gobierno dilata la promulgación de leyes para hacer operativa la implementación. El parlamento y la burocracia dilataron la formulación de la primera reglamentación orgánica implementadora importante, Ley No. 5/1974 (o UU No. 5/1974) durante no menos de 18 años (Reglamentación Gubernamental No. 1992 sobre la Implementación de la Autonomía Local), mientras que la Reglamentación Gubernamental

723

No. 8/1995 sobre la Transferencia Parcial de la Autoridad Gubernamental del gobierno central a 26 *kabupaten* (distritos) pilotos demoró 21 años en ser emitida.

Una de las mayores virtudes del Decreto No. IX/MPR/2001 es que unifica y delinea un cuerpo de piezas diseminadas de legislación y previsiones constitucionales relativas al manejo de recursos naturales en territorios indígenas que eran generalmente contradictorias, con el resultado de que la industria extractiva y las diferentes ramas de la burocracia podían elegir cuál ley sectorial querían aplicar a su caso. Los titulares de concesiones (HPH), por ejemplo, generalmente apelaban a la Ley Forestal Básica, que sólo reconocía bosques estatales y no reconocía el título nativo a bosques y tierras. Los inversores mineros, por su parte, podían señalar el Artículo 33 de la Constitución que investía al estado la propiedad –y por lo tanto el derecho a conceder concesiones mineras- de los recursos del subsuelo. A diferencia de la nueva ley, ningún principio sobre compatibilidad social o ambiental restringía las actividades madereras y mineras conforme a las leyes sectoriales que Soeharto había promulgado.

Conflicto comunal y construcción de la paz

Durante los primeros cuatro años después de la abdicación de Soeharto, la información sobre los acontecimientos en Indonesia era una tarea ensombrecida por una serie de conflictos comunales sangrientos que, o bien implicaban a comunidades indígenas, o desestabilizaban las áreas habitadas por las mismas. Los prolongados conflictos etno-religiosos en Poso y Ambon todavía se dilatan cuatro años después de Soeharto, mientras que en otros lugares, han surgido muchos nuevos conflictos entre pueblos indígenas por un lado y compañías, gobiernos locales, inmigrantes, o incluso otros pueblos indígenas por el otro. La lista de conflictos que involucran o afectan a los pueblos indígenas es larga: uno entre el BPRPI (una organización principalmente integrada por indígenas melayu) y PTP (Plantación Estatal de Caña de Azúcar) y KIM (Kawasan Industri Medan) en el norte de Sumatra, los casos que involucran a los meratus y ketungau dayak en Kalimantán, los puntos conflictivos de Jambi y Bengkulu en Sumatra, Dongi-Dongi en Sulawesi, etc.

En el caso de los conflictos en Poso (Isla de Sulawesi) y Ambon (Maluku), el gobierno ha iniciado y facilitado un proceso de reconciliación. El Acuerdo Malino (cuyo nombre proviene de un pueblo de Sulawesi) entre el gobierno y las partes en conflicto en Poso y Ambon es uno de los resultados de este esfuerzo. Sin embargo, mientras que el gobierno alega haber reunido exitosamente a las partes en guerra

724

en la mesa de negociaciones y logró hacerlas hablar de paz en Malino, algunas ONG locales argumentan que todavía no se ha logrado nada ya que la población local de ambos lados cuestiona la legitimidad de quienes han alegado representarlos en las negociaciones de paz. En general, el gobierno –nacional y local- carece claramente de imaginación para intentar nuevas formas de forjar la paz entre estas sociedades locales profundamente divididas. Un canal alternativo promisorio para la transformación exitosa del conflicto sería revitalizar los procedimientos tradicionales *adat* a través de los cuales las partes en conflicto podrían reunirse, en vez de caer en el mecanismo desgastado de realizar rituales de propuestas de paz donde asisten siempre los mismos "representantes" de los grupos religiosos involucrados o de asociaciones "étnicas", de la juventud y organizaciones profesionales que ofrecen para estos rituales estatales. Es claro que hay más contenido en estos conflictos que la visión "blanco y negro" de "musulmanes" contra "cristianos" o "indígenas" contra "inmigrantes".

La falla de esas categorías puede verse en Kalimantán Oriental, distrito de Paser. Allí, la propuesta de dividir Paser en dos distritos ha creado una tensión substancial entre los indígenas dayak de Paser y los inmigrantes de diversos antecedentes. Se anunció que la parte septentrional del Distrito de Paser, rica en minerales, y que es un imán para la inmigración no-dayak, sería convertida en un nuevo y separado distrito. Los dayak enfurecieron con esta propuesta, denunciándola como una segregación de las áreas ricas en recursos del distrito de las áreas agrícolas de agua de remanso y queda las primeras a no-dayak advenedizos al distrito. El conflicto en Paser muestra un modelo que también está siendo aparente en otras partes del archipiélago, donde la descentralización se convierte en un pretexto para expropiar dominios indígenas, entregándolos a inversores externos.

Las comunidades indígenas que sufrieron estos prolongados conflictos con otras partes han acordado el fortalecimiento de las organizaciones indígenas y la revitalización de las instituciones indígenas, otorgándoles la más alta prioridad en sus programas de trabajo. Este nuevo enfoque está basado en la premisa de que la reconciliación "genuina" sólo puede ser iniciada por representantes "genuinos" de las comunidades en guerra, igual que las reivindicaciones "genuinas" sobre el dominio ancestral sólo pueden presentarse por personas que representen instituciones y sistemas indígenas de gobierno "reales". Esta revitalización de las instituciones *adat* ha tenido lugar en Lampung Occidental, Mentawi, Toraja, Sanggau, Lombok Occidental, Kei, Buru, Flores y muchos otros lugares. En Kei y Buru (dos islas Molucas), el rol de las instituciones indígenas probó ser efectivo para el arreglo y la prevención de conflictos.

725

Una vez que unl conflicto entra en una espiral fuera de control, la intervención decisiva del gobierno y los intentos de restablecer la normalidad pueden ser la única forma de romper el círculo vicioso de autodestrucción mutua. En esa situación, el estado debería estar presente para ayudar al pueblo a resolver problemas que están demostrando ser demasiado difíciles de resolver sin intervención externa. Sin embargo, cuando el pueblo demuestra la capacidad de hacerse cargo de sus propios problemas y gobernar sus vidas por sí mismos, el estado debería confinarse a asumir un rol más facilitador. El gobierno del Distrito de Lampung Occidental está entre estos nuevos gobiernos locales apoderados que han demostrado un remarcable éxito en la colaboración con los pueblos indígenas. Avanzó mucho en el desarrollo de la gobernación comunitaria basada en las funciones de las instituciones indígenas y el papel de los líderes indígenas. Esta humildad y voluntad para aprender de los pueblos locales es algo muy lejano para el gobierno nacional encabezado por Megawati Soekarnoputri, cuya distancia de las necesidades y problemas de los ciudadanos ordinarios ha quedado al desnudo a través de los comentarios arrogantes que hicieron algunos de sus representantes después de la gran inundación que anegó a Yakarta y otros lugares de Indonesia a comienzos de 2002.

Notas y referencias

1 *Undang-Undang Republik Indonesia Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah.* 1999. Jakarta: Panca Usaha.
2 *Ibid.* Esta y otras traducciones del artículo son del autor.
3 *Undang-Undang Dasar Republik Indonesia Tahun 1945 Setelah Amandemen Kedua Tahun 2000.* 2001. Bandung: Pustaka Setia.
4 *Ibid*
5 *Panduan Umum Pengembangan Kesejahteraan Sosial Komunitas Adat Terpencil* 2000. Direktorat Kesejahteraan Komunitas Adat Terpencil, Deputi Bidang Peningkatan Kesejahteraan Sosial, Badan Kesejahteraan Sosial Nasional.
6 *Panduan Teknis Persiapan Pemberdayaan Komunitas Adat Terpencil.* 2000. Direktorat Kesejahteraan Komunitas Adat Terpencil, Deputi Bidang Peningkatan Kesejahteraan Sosial, Badan Kesejahteraan Sosial Nasional.
7 Por una presentación de los problemas especiales enfrentados por los kubu y orang rimba y los esfuerzos para ayudarlos ver, Øyvind Sandbukt, "Deforestación y el pueblo del bosque: los orang rimba o kubu de Sumatra", *Asuntos Indígenas* No.2/2000.

726

MALAISIA

Decisiones judiciales sin precedencia

Este año fue testigo de dos decisiones históricas en las Altas Cortes de Malaisia que es de esperar que comience un proceso dirigido a reconocer el derecho de los pueblos indígenas a sus territorios tradicionales.

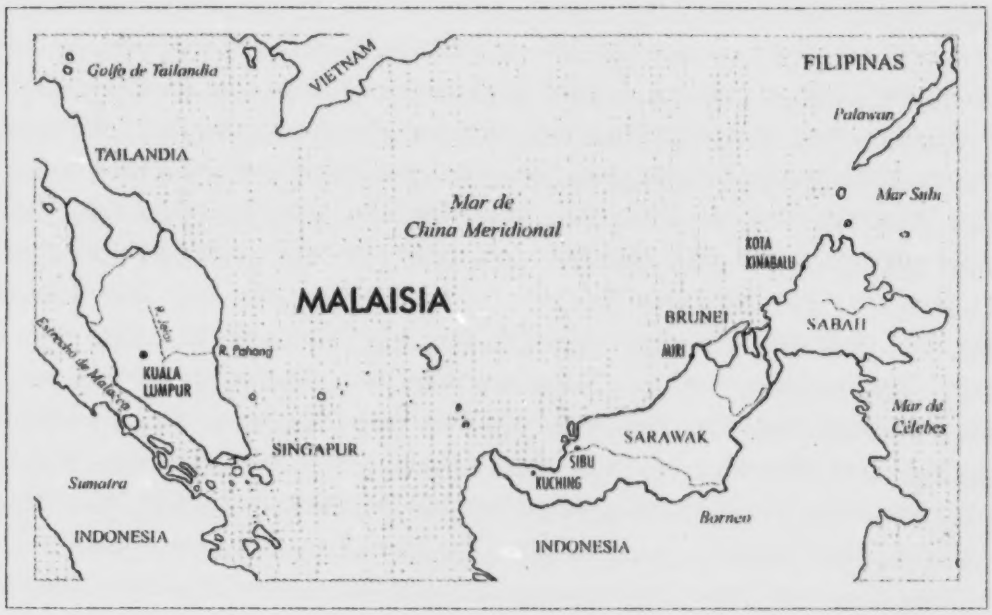
En el primer caso, la Alta Corte de Sarawak sostuvo que los cuatro indígenas iban, de la casa colectiva de Rumah Nor Nyawai, tenían derecho a ejercer sus derechos nativos consuetudinarios sobre una tierra en disputa, cuyos límites fueron trazados mediante un mapeo de la comunidad. Los cuatro habían demandado a la Borneo Pulp Plantation y a Borneo Pulp and Paper Sdn Bhd por invasión de sus tierras. También demandaron al Superintendente de Tierras y Relevamientos de la División Bintulu por ser la autoridad que emitió los títulos a la tierra a los acusados.

El 12 de mayo de 2001, la Alta Corte de Miri reconoció que los derechos consuetudinarios nativos de los iban siempre habían sido reconocidos por las leyes de Sarawak, desde el tiempo de Brooke[1] hasta que Sarawak se convirtió en parte de Malaisia. Por lo tanto, la corte falló que los derechos nativos consuetudinarios, que están codificados en los estados del este de Malaisia, Sabah y Sarawak, existían mucho antes de que la legislación moderna entrara en vigencia y que ésta, por lo tanto, es sólo relevante para determinar cuántos de estos derechos nativos consuetudinarios han extinguido. Como tal, los derechos nativos consuetudinarios de los iban a su asentamiento (*pemakai menoa*), tierras de cultivo (*temuda*) y el bosque originario (*pulau*) no habían sido abolidos por ninguna legislación y, por lo tanto, estos derechos todavía existen hasta hoy. No obstante, la decisión está bajo apelación.

En el segundo caso, la Alta Corte de Shah Alam sentenció el 12 de abril de 2002 que los orang asli de Malaisia Peninsular tienen un interés propietario en tierras tradicionales consuetudinarias y tradicionales ocupadas por ellos (pero no "toda la jungla") y que tienen el derecho a usar y obtener beneficios de la tierra. La corte también falló que la tierra orang asli gozaba de una protección constitucional bajo el Artículo 13(1) relativo a la propiedad. La apropiación de la tierra consuetudinaria orang asli sólo podía ser realizada conforme a la Ley de Adquisición de Tierras y, si se hace, debe pagarse compensación conforme a las tasas prescritas en la Ley.

En este caso, siete temuan orang asli en Kampung Bukit Tampoi, Selangor, habían demandado al Gobierno Federal y Estatal, los Inge-

727



nieros Unidos de Malaysia Brehad (UEM) y la Autoridad de Autopistas de Malaisia (LLM) por la pérdida de 15,93 hectáreas de sus tierra, con cultivos y viviendas, cuando la tierra fue invadida en 1996 para construir una autopista que conducía al Aeropuerto Internacional de Kuala Lumpur.

La Alta Corte sostuvo que la evicción de los orang asli era ilegal y que los actuales ocupantes de la tierra –UEM y LLM- habían cometido intrusión y tenían que pagar daños y perjuicios. En otra sentencia significativa, la Corte sostuvo que el gobierno tenía un deber fiduciario con los orang asli y éste fue quebrantado cuando adquirió la tierra sin informarlos adecuadamente y compensándolos solamente por la pérdida de sus cosechas y viviendas.

En los casos iban y temuan, la corte aceptó mapas (mostrando detalles de los límites y los sitios culturales) dibujados y producidos por la comunidad. Sin embargo, en un intento abierto de impedir esa participación comunitaria en la producción de sus propios mapas de sus tierras consuetudinarias, el gobierno del estado de Sarawak enmendó la ley, estableciendo que sólo los mapas producidos y certificados por un relevador calificado, podían ser presentados en una corte de justicia. Dado los costos exorbitantes de esos relevamientos, hay razones para creer que estas enmiendas de la legislación tenían como objetivo impedir a otras comunidades presentar demandas similares para obtener el título nativo.

BEST COPY AVAILABLE

Amenazas continuas

No obstante, aparte de estas decisiones fundamentales de la Alta Corte, continúan las amenazas a los territorios tradicionales de los pueblos indígenas de Malaisia de parte de una variedad de actores. Doce comunidades penan en Baram Central, por ejemplo, están protestando contra el desarrollo de proyectos de explotación de palma oleaginosa y de madera en sus tierras consuetudinarias, promovidos por una compañía privada, Shin Yang Forestry Sendirian Berhad, que supuestamente recibió la licencia del área bajo el así llamado *"Konsep Baru"* (Nuevo Concepto) de programación de desarrollo en tierras nativas en Sarawak. El 18 de abril de 2002, 32 penan fueron arrestados y llevados a la estación de policía de Marudi por establecer bloqueos y proteger sus tierras. Aunque la mayoría fue finalmente liberada, todavía quedan ocho en detención que van a ser juzgados.

En Malaisia Peninsular, los planes de construcción de varias represas (como la de Kelau en Pahang y otras recientemente anunciadas en los ríos Jelai y Tembeling) usurpan invariablemente los territorios tradicionales orang asli. En Sabah, el gobierno está comenzando con la limpieza de 220.0000 hectáreas de bosques en Kalabakan, Tawau, que es el territorio de varios grupos nativos. Esto sucede a pesar del hecho de que la razón original para esa limpieza extensiva del bosque – el emplazamiento de una planta maderera de la Sabah Pulp and Paper de US$5,3 millones- ha sido descartado por razones financieras.

A nivel nacional, una coalición de 14 organizaciones indígenas, no-gubernamentales y comunitarias - Jaringan Orang Asli Dan ONGs Tentang Isu Hutan (JOANGO HUTAN –Colectivo de las Comunidades Indígenas & ONGs sobre Temas Forestales) – expresaron fuertes preocupaciones y objeciones al Consejo de Certificación Maderero de Malaisia (MTCC) sobre el intento en marcha de trazar un Criterio e Indicadores Malaisios (MC&I) sobre la certificación maderera. Sin embargo, cuando quedó en claro que su participación en el proceso estaba siendo considerada como un endoso de los criterios diluidos y promovidos por el lobby pro-maderero, la coalición se retiró, poniendo así todo el proceso de certificación maderera de Malaisia en peligro de no ser reconocido internacionalmente.

En esencia, el proceso fue sumamente erróneo porque no protegía ni reconocía los derechos de los pueblos indígenas y las comunidades forestales locales que residen en esas áreas y que dependen de los bosques para su subsistencia. En el caso de Sarawak, por ejemplo, el permitir el establecimiento de Unidades de Manejo Forestal (FMUs)- las unidades centrales que serán las bases de un supuesto manejo forestal sostenible- significa efectivamente la aceptación de que todos los

729

derechos nativos consuetudinarios en esas áreas serían efectivamente extinguidos. El objetivo de MC&I como tal -vender madera a los altos precios de los mercados europeos- no promueve los intereses y derechos de los pueblos indígenas. Sólo esto, consideró la coalición, era razón suficiente para retirarse del proceso.

Entonces, aunque hay promisorios movimientos en las cortes del país para reconocer los derechos indígenas a la tierra y los medios de subsistencia, la realidad es que la usurpación y la apropiación de territorios indígenas todavía continúa con un vigor aún mayor.

Nota

1 James Brooke: primer «gobernador» inglés (1841) de Sarawak (n.d. e.).

TAILANDIA

El norte de Tailandia está ubicado en un área étnicamente diversa donde las fronteras nacionales fueron trazadas por fuerzas externas, dejando a muchos grupos étnicos divididos entre estados nacionales. Esto condujo inevitablemente a un debilitamiento de su capacidad para presentar voces unificadas en los sistemas de los países en que viven.

Los pueblos del norte de Tailandia

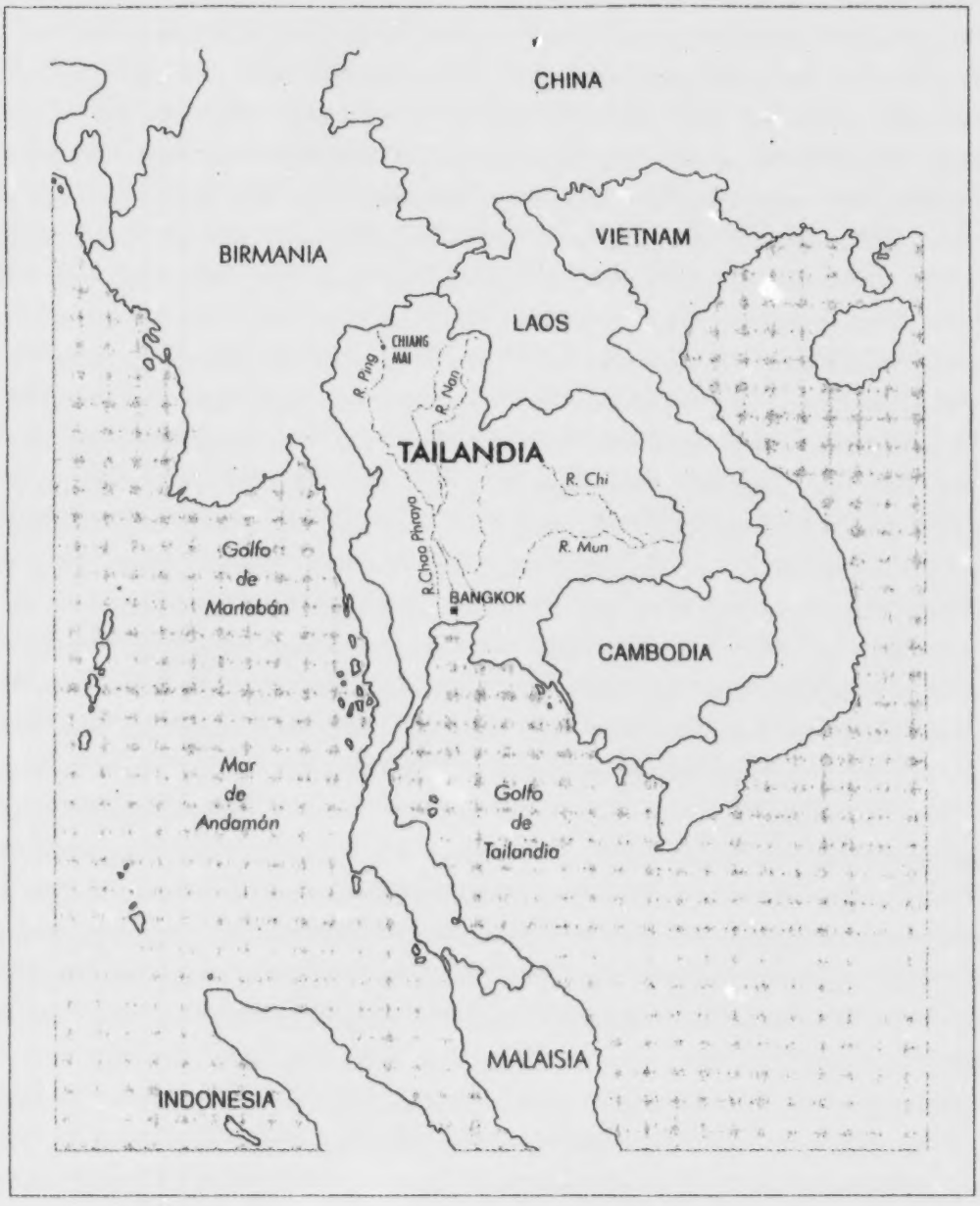
Este problema es compartido por los pueblos del norte de Tailandia, a quienes el gobierno hace referencia como *chao khao* o "pueblos de la montaña". El uso de este término en el discurso oficial tailandés refleja el prototipo prevaleciente de un solo grupo de "montañeses", que niega la rica diversidad cultural, étnica, histórica y lingüística de los pueblos indígenas y tribales a los cuales se refiere. Aunque la cifra oficial miente, mencionando a poco más de 860.000 personas, las estimaciones no oficiales de la población total de pueblos indígenas y tribales los ubica en más de un millón. Incluso esta cifra es, en realidad, demasiado baja ya que se refiere sólo a aquellos grupos que han sido reconocidos como "montañeses"[1]. Grupos como los daraung, los shan y los palong son o bien descartados por tener muy

escasa población para ser reconocidos oficialmente o son definidos como "poblaciones inmigrantes". Los grupos reconocidos por el gobierno de Tailandia como *chao khao* tienen todos muy diferentes historias y culturas. Los pueblos karen y lua han vivido en el norte y este de Tailandia durante siglos, mucho antes de la llegada de los grupos de lengua tailandesa (como los actuales tailandeses dominantes). Hoy, comparten la tierra con pueblos tradicionalmente migratorios como los hmong, lisu, lahu y akha, quienes hace mucho tiempo han cruzado y vuelto a cruzar las fronteras nacionales que eran desconocidas o no reconocidas por ellos.

Las complejidades de los temas en cuestión y la inexactitud de las definiciones utilizadas actualmente no son simplemente asuntos de interés académico. Tienen real y frecuentemente impactos devastadores sobre las vidas y futuros de los pueblos indígenas y minoritarios en toda la región, un hecho que es atestiguado por la continua violencia y disturbios en los países fronterizos. La actitud del gobierno tailandés con respecto a los pueblos montañeses fue tradicionalmente de distanciamiento, y el intento oficial de gobernar las áreas montañosas demoró mucho en llegar. Durante bastante tiempo después del establecimiento del estado nacional tailandés, las áreas fronterizas eran consideradas todavía como antes: como áreas de menor influencia en donde el rol del estado era fundamentalmente garantizar la lealtad. Recién en los años 60, cuando el tema de la producción de opio comenzó a atraer la atención internacional, y cuando el incremento de la población resultó en la intrusión de los agricultores de las tierras bajas en las tierras agrícolas tradicionales de los pueblos de la montaña, el gobierno tornó su atención a estas áreas remotas. El gobierno también citó la insurgencia en algunas de las áreas fronterizas y países vecinos como causa de su interés en las áreas montañosas.

Esto tuvo como resultado una triple visión de los pueblos de la montaña, como una amenaza a la seguridad nacional, una amenaza a los recursos naturales y como los principales productores y comerciantes de drogas ilícitas. Esta visión se solidificó a través de los años en un prejuicio oficial profundamente arraigado que continúa influyendo las políticas y leyes del gobierno. Esto conforma el entorno social y político en que las comunidades indígenas han tenido que luchar para mantener sus identidades dentro de la nación tailandesa. La lucha ha asumido la forma de presión política para obtener una voz, para obtener programas educativos que reflejen el patrimonio comunitario y cultural y por el reconocimiento de formas tradicionales de manejo de recursos y derechos a la tierra, cuestiones esenciales para la sostenibilidad y seguridad comunitaria. Los resultados obtenidos de la afirmación relativamente reciente

731



de una presencia política formal en Tailandia han sido considerables, aunque los obstáculos enfrentados siguen estando firmemente presentes.

Participación política

La "constitución de los pueblos" de 1997 fue importante para abrir un espacio en donde los pueblos indígenas y tribales pudieran recla-

BEST COPY AVAILABLE

mar una voz en la política tailandesa. Esta constitución fue un acontecimiento fundamental en el desarrollo de la participación popular en la democracia y una fuente de habilitación potencial para grupos marginados en todos los sectores de la sociedad tailandesa. Fue redactada con alto nivel de participación del pueblo y consagra el derecho de participación popular en los procesos de toma de decisión en todos los niveles del gobierno de la nación. Este derecho ha sido acogido por las organizaciones indígenas y tribales que actualmente están tomando un rol activo dentro del sistema político tailandés. En 1997, las redes particulares de seis diferentes pueblos tribales se combinaron para formar la Asamblea de Pueblos Indígenas y Tribales de Tailandia (AITT) y esta Asamblea ha funcionado como miembro negociador formal frente al gobierno, en nombre de los pueblos indígenas y tribales. Su papel y características son de alguna manera únicos, pues está integrada por miles de comunidades diseminadas que, a través de sus representantes electos, establecen su mandato y sus prioridades. Una serie de organizaciones indígenas y tribales no-gubernamentales trabajan como el secretariado de la Asamblea cuando es necesario, el que ha demostrado ser un importante foro para el intercambio y la asistencia mutua en los años que sucedieron a su fundación. A comienzos de 2002, la Asamblea representaba los intereses de seis redes tribales en negociaciones directas con el gobierno tailandés, exigiendo que se tratara el tema de documentos legales conflictivos o no existentes y que se reconociera su derecho a la participación en el establecimiento de objetivos de desarrollo en tierras indígenas.

La Asamblea también aunó fuerzas con la Red de Agricultores del Norte (NFN), una coalición de comunidades agricultoras del norte, para solicitar al gobierno que continuara su apoyo a la Ley Forestal Comunitaria que está bajo consideración. Este enfoque de hacer coaliciones con comunidades tailandesas de las tierras bajas ha demostrado ser un foro poderoso para presentar temas indígenas y tribales al gobierno. Trabajando predominantemente con los derechos a la tierra y el manejo de recursos en áreas forestales, la NFN ha sido una organización líder en la elaboración de la Ley Forestal Comunitaria y en la defensa del reconocimiento formal de técnicas tradicionales de manejo de recursos naturales.

Estatus legal

Aparte de la Ley Forestal Comunitaria, otros dos temas han ocupado la agenda de AITT durante el año pasado: el tema del estatus legal personal y el tema de la participación en la planificación del desarro-

733

llo. Uno de los primeros logros de AITT fue la exitosa conclusión de un proceso de negociación con el gobierno, que condujo a la apertura de un período de un año para una rápida solicitud de peticiones de ciudadanía y otros estatus personales legales. Este período se extendió del 29 de agosto de 2000 hasta el 28 de agosto de 2001 y cada una de las redes tribales, junto con organizaciones no-gubernamentales y organizaciones comunitarias, comenzaron el largo proceso de capacitación e instrucción de los miembros comunitarios sobre la documentación requerida para presentar peticiones.

Debido a razones históricas y estructurales, existe una serie confusa de "estatus legales" para miembros de comunidades tribales e indígenas, y decenas de miles de personas siguen careciendo de estatus oficial en la ley tailandesa. Estos temas de ciudadanía y estatus legal son de importancia fundamental, porque sin un estatus legal formal una persona no tiene protección legal de sus derechos básicos, como acceso a los servicios o libertad de movimiento.

A nivel práctico, los problemas son inmensos. La oportunidad abierta durante un año para resolver los temas de ciudadanía y estatus legal fue desastrosamente corta y sigue habiendo una falta de comprensión sobre los procedimientos y requisitos para solicitar la ciudadanía. La transferencia de la autoridad para realizar peticiones en las oficinas del distrito local fue útil para tratar, al menos, algunas de las dificultades prácticas que enfrentan las comunidades de las montañas. Es claro que se necesita un trabajo simultáneo en el ámbito político, y se formaron coaliciones entre AITT, NFN y la Federación Septentrional de Campesinos a comienzos de 2002 para intentar llevar a debate estos temas políticos entre el pueblo y el gobierno. Una vez más, el tema de los derechos indígenas y tribales al estatus legal fue presentando en la mesa de negociaciones y, con el apoyo de los grupos tailandeses de las tierras bajas, se llegó a acuerdos con representantes del gobierno sobre cambios políticos necesarios para facilitar una solución práctica al tema.

Derechos a la tierra y a los bosques

Además, y estrechamente relacionado con la falta de reconocimiento de los pueblos tribales e indígenas como parte de la más amplia sociedad tailandesa, existe una falta de reconocimiento del derecho de los pueblos tribales e indígenas al acceso y control sobre el manejo de sus tierras y recursos tradicionales. La vasta mayoría de las comunidades tribales e indígenas se encuentran en tierras montañosas, donde se encuentra la mayor parte de los bosques restantes que antes cubrían gran parte de las regiones norte, nordeste y oeste de Tailan-

734

dia. Aunque habitadas y cultivadas por comunidades indígenas y tribales, muchas de estas áreas han sido declaradas ahora áreas protegidas y, consecuentemente, caen bajo la jurisdicción del Departamento Real de Silvicultura. Desde el establecimiento de este departamento en Tailandia a comienzos del siglo XX, a esta agencia le fue otorgada la responsabilidad oficial para la conservación de todas las áreas forestadas. Este concepto centralizado del manejo de recursos naturales y la visión inapropiada de los bosques protegidos como "bosques vacíos" actúan para negar y limitar los derechos indígenas a la tierra en Tailandia.

La Asamblea de Pueblos Indígenas y Tribales, junto con una serie de otras organizaciones populares del norte de Tailandia, presentaron al gobierno una petición relacionada con el tema de los derechos al bosque y a la tierra en abril de 2002. A pesar de la fuerte alianza entre los grupos tailandeses de las tierras bajas y los pueblos indígenas y tribales, la negociación directa con el gobierno no produjo ningún resultado. El tema de los derechos indígenas sobre el manejo de recursos ha tenido un progreso mayor con la Ley Forestal Comunitaria, elaborada durante el transcurso de los pasados diez años y presentada al gobierno para su consideración en el año 2000. Con años de experiencia de lobby político, la Red de Agricultores del Norte y las otras organizaciones que patrocinaban la Ley lograron que fuera aprobada por la Cámara de Representantes a fines de 2001 y pasada al Senado a comienzos de 2002.

Si la Ley Forestal Comunitaria fuera promulgada por el gobierno en su forma original, sería el instrumento legal más fuerte a disposición de los pueblos indígenas y tribales para la protección de sus derechos a sus recursos y tierras. Aunque impone una carga considerable de prueba a las comunidades indígenas y tribales, y provee solamente la "administración aprobada por el gobierno" y ningún reconocimiento real de derechos *a priori*, tiene el potencial de garantizar alguna seguridad de la tenencia de la tierra. Sin embargo, en abril de 2002, el Senado consideró apropiado enmendar la Ley, eliminando el Artículo 18 y, con eso, el derecho de las comunidades que viven en áreas de conservación declaradas por el gobierno no sólo a reclamar el derecho a poseer, sino simplemente a manejar sus bosques comunitarios. Además, el Senado restringió y distorsionó la intención de la Ley al limitar los derechos a recolectar productos forestales y eliminó el derecho a cambiar los límites de los bosques comunitarios en el futuro.

Esos procesos legales y políticos para reivindicar derechos a la tierra y a los recursos es una de las dos estrategias empleadas por las comunidades indígenas y tribales. La segunda estrategia, de igual importancia, es un esfuerzo permanente para establecer un reconoci-

miento general en la opinión pública tailandesa que las comunidades forestales montañesas son administradores capaces y responsables de los recursos forestales de la nación. El prejuicio contra las comunidades montañesas y la continua visión de ellas como "destructoras de los bosques" ha sido parte de la experiencia de los pueblos indígenas y tribales durante décadas. Encarar estos estereotipos negativos es una batalla a largo plazo, pero que ya ha contemplado algún éxito. La divulgación de información sobre prácticas forestales tradicionales y los foros públicos para explicar el concepto de uso sostenible y manejo interrelacionado en que están basados los sistemas tradicionales están siendo aceptados cada vez más en los medios de difusión dominantes.

No solamente en el ámbito legal y público se discute cada vez más el manejo tradicional de recursos. Dentro de las mismas comunidades, se requiere una articulación más clara de los principios de manejo forestal, como forma de impulsar la aceptación pública. Esto ha resultado en que se han adoptado aspectos del manejo forestal moderno y se han adaptado para usarlos en las comunidades indígenas y tribales. En casi todas las comunidades montañesas se están creando modelos y mapas para demostrar los principios de manejo tradicional de una forma accesible al público en general. La idea de manejo tradicional como un proceso dinámico y en evolución es aceptada a nivel de bases, lo que a su vez sirve para fortalecer la lucha a nivel político y legal.

El futuro

Uno de los logros durante el año 2001 es de enorme importancia para el futuro de los movimientos indígenas y tribales en Tailandia: el rol político reivindicado por y otorgado a las comunidades indígenas y tribales ha alcanzado un nivel en el que las comunidades tienen la posibilidad de negociar formalmente con sus representantes electos. Esto se debe indudablemente, al menos en parte, al apoyo y la solidaridad que existe entre una serie de comunidades pobres del norte y la Asamblea de Pueblos Indígenas y Tribales de Tailandia, junto con el compromiso de las comunidades indígenas con organizaciones como la Red de Agricultores del Norte. No obstante, a pesar de logros impresionantes durante el año pasado, los obstáculos que enfrentan los pueblos indígenas y tribales en el norte de Tailandia siguen siendo considerables. Los logros obtenidos son mayormente el resultado de un trabajo persistente durante décadas, no de años, y todavía se necesitarán más décadas.

736

Nota

1 La lista más reciente de marzo de 2002 de la Sección de Estadísticas Tribales, Servicios y Divulgación del Instituto de Investigación Tribal, Chiangmai, incluye diez tribus y una cifra total de población de 899.749 individuos.

CAMBOYA

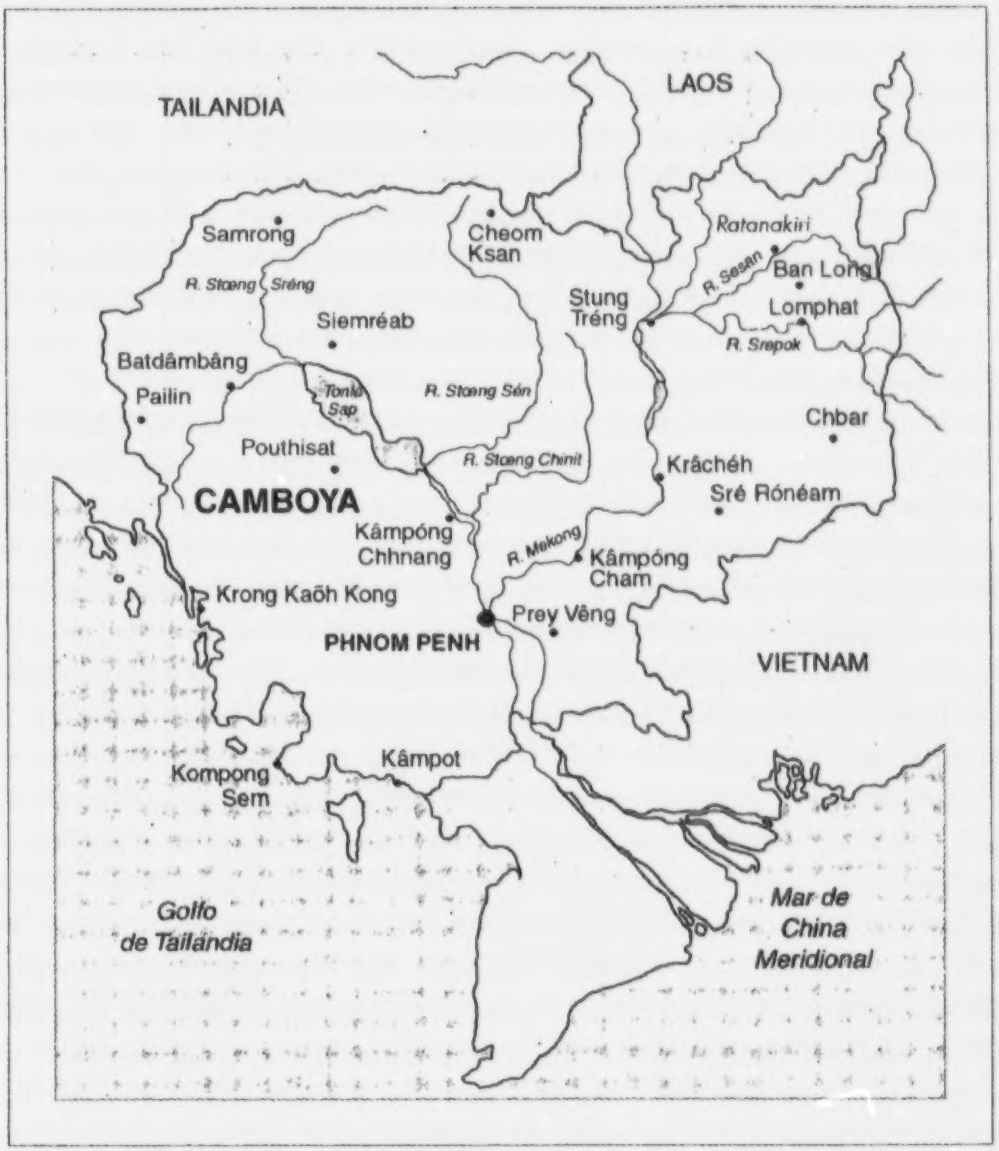
El año 2001 fue testigo de numerosos avances de los movimientos de los pueblos indígenas en algunas provincias de Camboya en lo relativo a sus derechos a la tierra y la protección de los bosques y los recursos naturales de los que dependen para obtener sus medios de subsistencia. En julio de 2001 se aprobó una nueva ley que incluía previsiones para la tenencia de la tierra indígena comunitaria y en marzo 2002, los aldeanos indígenas de la provincia de Ratanakiri se impusieron sobre un general del ejército quien, según se informó, había intentado engañarlos y sacarlos de sus tierras ancestrales. Los activistas locales y los representantes de la comunidad indígena lanzaron campañas de defensa para monitorear los impactos río abajo sobre las comunidades montañosas de la represa vietnamita de las cataratas de Yali, proteger el derecho a recolectar productos forestales no-madereros y establecer asociaciones para proteger bosques comunitarios y pesqueros.

Al mismo tiempo, la presión económica siguió intensificándose sobre la región nororiental de Camboya, rica en recursos, y sus habitantes indígenas, porque continuaron los planes para extracción maderera y plantaciones comerciales, proyectos hidroeléctricos y migración de khmer de las tierras bajas a las montañas. La tendencia hacia el desarrollo fue ilustrada por un comentario del Primer Ministro Hun Sen en enero de 2002, quien declaró que su sueño para el año 2020 era para el noreste de Camboya –ahora habitada mayormente por comunidades indígenas – que se convirtiera en uno de los "pilares económicos del país".

Política nacional

Las comunidades indígenas en algunas de las provincias como Kompong Thom y Preah Viera, donde hay pocas ONGs, están aisladas de

737



las redes nacionales de defensa y abogacía. En el nordeste de Camboya, las ONGs locales e internacionales que trabajan con comunidades indígenas, junto con diversos departamentos gubernamentales, han intentado aumentar la participación indígena en la política y programas locales y nacionales de desarrollo para las montañas.

En marzo de 2001, los representantes comunitarios indígenas jugaron un fuerte papel en una conferencia internacional en la provincia de Ratanakiri sobre "Fortalecer Asociaciones en el Manejo Comunitario de los Recursos Naturales". Los participantes de la conferencia recomendaron que los departamentos gubernamentales y las ONGs debían consultar con comunidades indígenas en la pla-

BEST COPY AVAILABLE

nificación del programa, hacer una capacitación de sensibilización cultural, hacer más esfuerzos para emplear y capacitar personal indígena y usar lenguas locales en el trabajo de desarrollo.

A comienzos de 2002, un recién establecido Departamento de Desarrollo de Minorías Étnicas dentro del Ministerio para el Desarrollo Rural, comenzó a tratar amenazas a las comunidades indígenas debido a la pérdida de tierra y bosques por causa de plantaciones comerciales, extracción maderera e inmigración. Un proyecto preliminar de política nacional sobre pueblos indígenas, que había estado en suspenso desde 1997, fue revivido para ser discutido y para una posible aprobación por el Senado.

Derechos a la tierra

Los derechos a la tierra y la arbitraria confiscación de tierras ancestrales siguieron siendo unos de los problemas más urgentes para las comunidades indígenas de toda Camboya.

Un ejemplo fue un gran conflicto de tierras en el Distrito Sandan, Kompong Thom, donde una plantación de caucho en la Comuna de Tumring tomó 900 hectáreas de una comunidad compuesta predominantemente de indígenas kuey a fines de 2001. En marzo de 2002, la compañía limpió completamente un área que los aldeanos habían marcado para bosque comunitario, talando unos 700 árboles de resina de los que los kuey dependían para su subsistencia.

La provincia del nordeste de Ratanakiri enfrentó docenas de casos de especulación de tierra y confiscación. En un importante caso de derechos de tierra que fue recién llevado a corte en marzo de 2001, aldeanos tampuen y jarai del distrito de Ratanakiri presentaron una apelación contra un general militar que había obtenido fraudulentamente el título de sus tierras ancestrales, poniendo en riesgo a 900 aldeanos de quedar desposeídos. En marzo de 2002, después de que una delegación de los aldeanos se reunió con el Rey Sihanouk, el Primer Ministro Hun Sen dio instrucciones al Ministerio de Administración de la Tierra de comprar la tierra del general y devolvérsela a los aldeanos, a cambio de que los aldeanos abandonaran su demanda contra el general. En este caso, que sienta precedentes, fue la primera vez que indígenas desafiaron a un oficial militar sobre una cantidad tan grande de tierra. La atención de la prensa y la defensa de ONGs locales e internacionales ayudaron a llamar la atención pública no sólo en el caso de tierras de Bokeo sino sobre el extendido problema de los conflictos sobre la tierra indígena en las montañas.

En julio de 2001, la Asamblea Nacional camboyana aprobó una nueva ley después de extensas consultas con organizaciones camboyanas y organizaciones internacionales no-gubernamentales (ONGs) y

739

con representantes de las comunidades indígenas. La nueva ley contiene disposiciones para que las comunidades indígenas puedan obtener el título de su tierra, bien en forma de títulos individuales para cada familia o como un título comunal para toda la comunidad. La tierra indígena comunitaria no es definida solamente como tierra residencial o agrícola, sino que también incluye las parcelas dejadas en barbecho como parte del sistema tradicional de la agricultura rotativa.

El derecho a los recursos

La protección y manejo de los recursos naturales surgió en forma creciente como tema durante 2001, porque las ONGs camboyanas y las comunidades locales, incluyendo los representantes indígenas, organizaron campañas de defensa en nombre de los bosques comunitarios y la pesca, reforma política forestal y el derecho a la recolección de recursos naturales como resina y otros productos forestales no maderables.

Los khmer y otras comunidades indígenas en Stung Treng, Ratanakiri, Modolkiri y Kratie, que dependen de la recolección de resina para su subsistencia, encontraron representación bajo la rúbrica de una ONG camboyana recientemente formada que trabaja para proteger el derecho a recolectar y vender resina. En abril de 2001, el Departamento de Silvicultura emitió una instrucción llamando a la suspensión temporaria, en todas las concesiones forestales, de talar todos los árboles de los cuales la gente recoge resina. A pesar de esto, el comercio de la resina siguió bajo una enorme amenaza porque las comunidades locales siguieron estando en competencia directa con las compañías madereras por los árboles.

Las comunidades montañosas de las provincias de Ratanakiri y Stung Streng, junto con ONGs colaboradoras, lanzaron una red de activistas indígenas a lo largo del Río Sesan en el noreste de Camboya para monitorear y realizar abogacía y defensa con respecto a los impactos ambientales de la represa de las cataratas de Yali de 720 MW, ubicada en Vietnam. La Evaluación de Impacto Ambiental oficial de la represa sólo examinó las consecuencias ambientales ocho kilómetros río abajo, descartando así la posibilidad de impactos en Camboya. Sin embargo, se sintieron importantes impactos negativos incluso antes de que la represa estuviera completamente operacional en 2001. Entre estos se encuentran crecidas no naturales y fluctuaciones dramáticas del nivel de las aguas del río, que llevó a una pérdida de equipos de pesca y de seres humanos y animales; y los

740

cambios de la calidad de las aguas que provocan crecientes enfermedades cutáneas y malestares.

Después de que las ONGs y funcionarios del gobierno en Ratanakiri comenzaron a recibir cantidades de quejas de los aldeanos que viven a lo largo del Sesan sobre los cambios que amenazan la vida en el río, se realizaron varios estudios independientes con el apoyo del gobierno local para documentar las quejas de los aldeanos y analizar los impactos sociales y ambientales de la represa en Camboya.

La Represa de las cataratas de Yali es apenas la primera de muchas represas planificadas para el Río Sesan. El gobierno vietnamés anunció que en 2002 comenzará la construcción de otra represa, la Se San 3, ubicada a unos veinte kilómetros río abajo de la Represa de las cataratas de Yali.

Extracción maderera y silvicultura comunitaria

Durante 2001 aumentó la presión sobre el gobierno para suspender las operaciones en todos los bosques como resultado de lo que se consideraba un progreso inadecuado para elaborar planes de manejo forestal sostenibles. A pesar del anuncio, la extracción maderera ilegal de las concesiones, así como también de soldados y policías, siguió planteando un importante problema para las comunidades que deseaban manejar su bosque.

Una nueva ley forestal, redactada en 2000, hizo algún progreso en 2001, aunque las ONGs y las comunidades locales siguieron teniendo preocupaciones con respecto al proyecto preliminar, que parece promover o justificar el uso de grandes áreas de bosque bajo un sistema de concesión forestal, y otorga al Departamento de Silvicultura y Fauna (DWF) poderes inconmensurables y arbitrarios sobre las decisiones relativas al uso del bosque.

En el ámbito nacional, progresó el trabajo sobre un subdecreto forestal comunitario que puede ser usado por los habitantes rurales y pueblos indígenas en toda Camboya que deseen reivindicar derechos de manejo sobre tierra forestal que no esté incluida en tierras que están tituladas en forma comunitaria. En el momento de escribir este artículo, estaba bajo consideración un proyecto de subdecreto por el Departamento de Silvicultura y todavía no había pasado al Consejo de Ministros.

A pesar de la falta de un subdrecreto forestal comunitario, las comunidades indígenas, particularmente en Ratanakiri, lograron obtener apoyo de las comunidades locales y donantes internacionales para el desarrollo de asociaciones forestales comunitarias y proyectos de manejo de recursos de base comunitaria. En Ratanakiri, una serie

741

de áreas forestales han sido cartografiadas y entregadas a la administración comunitaria. Estas incluyen un área de turismo y comunidad ambiental en las cataratas de O'Chloy y un área similar en torno al Lago Lum Kat. En enero de 2001, las autoridades provinciales de Ratanakiri y un representante del Rey Sihanouk firmaron un acuerdo con representantes de seis aldeas étnicas kreung, que entregó la protección y manejo de casi 5.000 hectáreas de bosque a la Asociación Comunitaria de Silvicultura Ya Poey.

Por el otro lado, en el distrito Sandan, Kompong Thom, las compañías madereras y el Departamento de Silvicultura y Fauna aceleraron las actividades madereras para sacar toda la madera comercializable posible de un área propuesta para un bosque comunitario antes de la aprobación del subdecreto de forestería comunitaria. En Sandan, el DFW permitió a las comunidades retener sus árboles mientras que paguen algunas regalías sobre las concesiones madereras y de talado.

Educación

El acceso y la calidad de la educación siguieron siendo un tema fundamental para los pueblos indígenas. Es menos probable que un niño indígena vaya a la escuela que un niño camboyano medio. Muchas escuelas no están operando en las montañas y las planicies de norte, debido a la falta a de edificios, maestros o alumnos, muchos de los cuales son necesarios en casa para ayudar al trabajo en las granjas o en torno a la casa. Las niñas adolescentes y pre-adolescentes son especialmente afectadas por esto. En respuesta a estas cuestiones, una serie de ONGs de Ratanakiri comenzaron a proveer educación no-formal integrada en las actividades de desarrollo, centrándose en temas de la vida diaria, como la salud, la agricultura, el medio ambiente y los derechos humanos. Algunos de estos programas han incluido la alfabetización en lengua materna para permitir y promover el acceso a la educación. Las clases de educación no-formal se realizan en casi la mitad de Ratanakiri.

Un nuevo proyecto en Ratanakiri, financiado por CARE Australia, ha comenzado a desarrollar el concepto de escuelas comunitarias bilingües. Administrado por miembros de la comunidad, este proyecto piloto usará la capacitación en lengua vernácula como puente hacia la alfabetización khmer y como un paso hacia la educación formal.

Otras iniciativas educativas no-formales han sido lanzadas por jóvenes indígenas en Ratanakiri, incluyendo programas juveniles de verano que se centran en temas ambientales y culturales para desarrollar técnicas básicas en investigación, documentación fotográfica, mu-

742

sicología, y escritura de informes. En respuesta al crecimiento del turismo en Ratanakiri, los jóvenes no sólo están aprendiendo inglés sino que están aprendiendo sobre cómo documentar su cultura y explicar la importancia del medio ambiente a los turistas en un programa financiado por la Embajada Australiana.

Salud

Los indicadores de salud y nutrición entre las comunidades indígenas de Camboya se encuentran entre los peores del país. En Ratanakiri, el índice de mortalidad infantil es de 187:1.000, casi el doble del índice nacional de 95: 1.000.

La malaria es el principal problema de salud en Ratanakiri. La tuberculosis, las enfermedades diarreicas, la anemia, la desnutrición infantil y las infecciones respiratorias agudas constituyen también importantes preocupaciones. Las comunidades indígenas corren un riesgo particular del HIV/SIDA debido a su falta de acceso a información sobre esta enfermedad y su prevención.

Crecimiento en la abogacía y defensa

Durante los pocos años pasados, los indígenas montañeses de algunas partes de Camboya se han familiarizado con el hecho de asistir y organizar reuniones, participar en talleres nacionales y provinciales, y capacitarse en negociación; comprendiendo que su participación directa en el trabajo de lobby para los temas de los indígenas montañeses en el ámbito nacional podría aumentar su voz.

Un grupo de abogacía sobre el manejo de recursos de los pueblos indígenas ha estado operando desde 2001. Se ha concentrado en mejorar el conocimiento local de leyes y políticas que afectan al manejo comunitario de recursos naturales y planteando los puntos de vista de las comunidades indígenas en el ámbito provincial y nacional, especialmente con respecto a las leyes y políticas relativas al manejo de los recursos naturales. En Ratanakiri, un equipo de indígenas, seleccionado por sus comunidades, comenzó a trabajar con proyectos de información gubernamental sobre derechos a la tierra, ofreciendo información legal y de derecho humanos a los aldeanos en sus propias lenguas.

En 1988 se creó una Red de Mujeres Indígenas de Ratanakiri (IWNR) para ayudar a las mujeres a tener una voz en la toma de decisiones en comunidades donde la gobernación de la aldea ha consistido tradicionalmente en consejos dominados por hombres o aldeanos ancianos.

743

A pesar de estos avances, los pueblos indígenas siguen estando subrepresentados en el gobierno nacional y provincial. Un ejemplo raro es Bou Tong, un tampuen étnico de Ratanakari quien es miembro de la Asamblea Nacional. Con su aliento, las comunidades indígenas de Ratanakari han comenzado a fundar una Asociación de Indígenas Montañeses para abogar en nombre de la preservación cultural y otros temas, centrándose especialmente en la consulta con las comunidades locales para obtener las visiones de las mujeres, los jóvenes y los ancianos. Una primera fase de consulta finalizó a comienzos de 2002, con alguna documentación sobre historias de las aldeas y derecho consuetudinario, así como una investigación sobre los intereses y aspiraciones de las comunidades. Los resultados iniciales mostraron que las preocupaciones principales eran la pérdida de tierra y recursos forestales, los impactos de la represa de las cataratas de Yali, y la falta de representación indígena en las oportunidades gubernamentales y educativas.

Sin embargo, queda mucho trabajo por hacer en relación con la abogacía y defensoría indígenas. Aunque las comunidades están obteniendo una voz en algunas áreas, particularmente en la provincia de Ratanakiri, los temas de los derechos indígenas tienen un perfil mucho más bajo en las llanuras del norte y las regiones montañosas del sur, donde hay mucho menos apoyo para los pueblos indígenas por parte de las ONGs y gobiernos locales.

VIETNAM

Los conflictos sobre derechos a la tierra y libertad religiosa caracterizaron gran parte del año en las áreas indígenas de Vietnam, un país en que el gobierno no autoriza la creación de grupos independientes de defensoría. En febrero de 2001, el gobierno respondió severamente a las protestas masivas sin precedentes realizadas por los pueblos indígenas en las montañas centrales, reclamando mayores derechos a la tierra, libertad religiosa e independencia.

La elección por el Partido Comunista Vietnamita de Nong Duc Manh, un miembro de la minoría tay, al cargo más elevado de la nación en abril de 2001, como Secretario General del Partido, no pareció traducirse inmediatamente en un enfoque más progresista y participatorio del gobierno con respecto a las comunidades indígenas minoritarias.

744

Las políticas gubernamentales continuaron insistiendo sobre la erradicación de la agricultura rotativa tradicional, utilizada por muchos indígenas de las montañas, y reemplazarla con el cultivo sedentario de arroz y cultivos comerciales. Además, las minorías étnicas cristianas en las tierras altas del norte y del centro sufrieron la persecución del gobierno.

Los grandes proyectos de represa en la provincia de Son La, así como en las tierras altas centrales, amenazaron con tener impactos negativos sobre los medios de subsistencia de los pueblos indígenas que viven a lo largo de los ríos y con desplazar a miles de montañeses de sus tierras ancestrales.

Política nacional

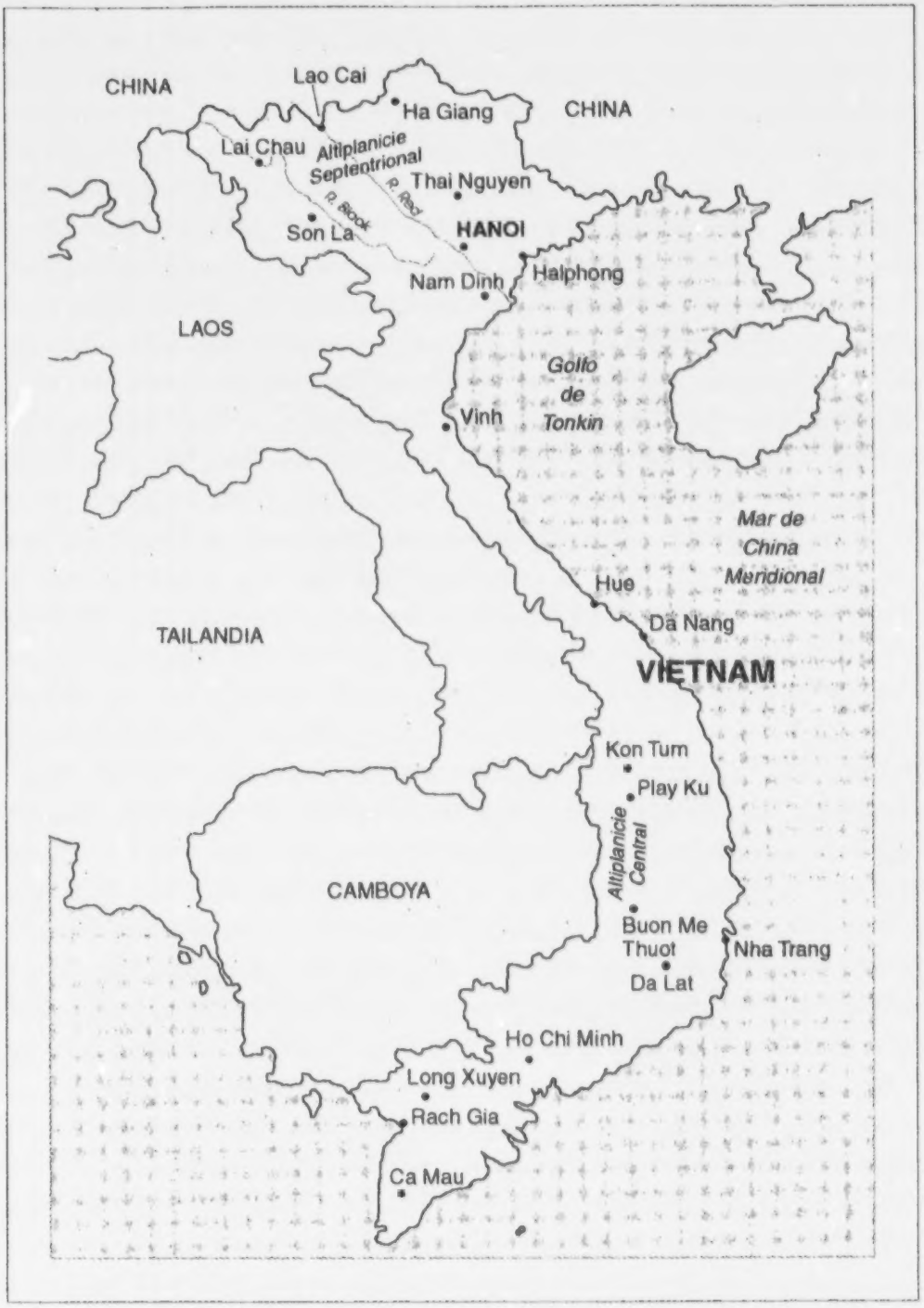
El gobierno vietnamita hizo numerosos intentos para enfrentar el descontento de las comunidades indígenas en las tierras altas centrales durante 2001; por ejemplo, prometió agilizar la titulación de tierras, aumentar las emisiones radiales de las minorías étnicas y ofrecer más oportunidades educativas a los pueblos étnicos minoritarios. Pero, generalmente, el enfoque oficial sigue siendo el de presionar por la "sedentarización" de las minorías indígenas agricultoras. Además, las comunidades indígenas que se han convertido al cristianismo evangélico –particularmente las que se encuentran en áreas fronterizas sensibles, como los hmong en el noroeste y los jarai, mnong y ede en las tierras altas centrales- se vieron sometidas a una severa vigilancia y represión.

En septiembre de 2001, el Primer Ministro Phan Van Khai hizo un llamado por un mayor desarrollo económico e incentivos agrícolas en la región más pobre de Vietnam, las seis provincias de las tierras altas septentrionales. Estas provincias, dijo, "deberían también ayudar a sus habitantes a cambiar hábitos regresivos en la producción y en la vida, y crear condiciones favorables para que los habitantes locales aumenten el crecimiento económico".

En octubre, el Servicio Estatal de Noticias de Vietnam, anunció que el Ministerio de Agricultura y Desarrollo Rural y el Departamento para la Agricultura Sedentaria, Vida y Nueva Economía tenía la intención de eliminar "la vida tradicional nómada y la agricultura de roza y quema" de las minorías étnicas de la montaña para el año 2005.

CEMMA, el organismo gubernamental que supervisa los programas para las minorías étnicas, estuvo plagado por un escándalo de corrupción. A comienzos de 2001, el Partido Comunista Vietnamita censuró a seis altos funcionarios de CEMMA por de soborno. En

745



noviembre de 2001, otras 12 personas fueron juzgadas en la provincia de Lai Chau bajo cargos de desfalco de fondos de CEMMA destinados a programas para combatir la pobreza en las tierras altas septentrionales.

BEST COPY AVAILABLE

Disputas sobre tierra

Los conflictos de tierra constituyeron un problema en todo Vietnam, incluyendo las áreas de minorías indígenas. Los programas de reasentamiento organizados por el gobierno, junto con la migración espontánea han cuadruplicado la densidad de población de vietnamitas étnicos y otros migrantes en partes de las tierras altas centrales desde 1975, creando una intensa presión sobre la tierra y los recursos naturales. Careciendo de certificados oficiales de uso de la tierra, los pueblos indígenas han sido empujados cada vez más fuera de su tierra. Las tensiones aumentaron en enero de 2001 y se informó que 100.000 personas más, en su mayoría pueblos étnicos minoritarios del norte, podrían ser reasentadas en las tierras altas centrales para dejar lugar al proyecto hidroeléctrico Son La. Al mismo tiempo, la base económica de las montañas, empujada hacia la producción de café durante la última década, ha sufrido un fuerte golpe con la caída internacional del precio del café durante los últimos tres años.

En el pasado, muchos pueblos indígenas de las tierras altas se sustentaban con, al menos, siete hectáreas de tierra por familia, en la que practicaban la agricultura de roza y quema (swidden). Cuando los habitantes de las tierras bajas u otras minorías étnicas de otras partes de Vietnam comenzaron a invadir su tierra, o cuando las plantaciones estatales los desplazaron, esas prácticas se hicieron insostenibles. Hoy, la mayoría de los montañeses se ganan la vida a duras penas con el cultivo de arroz y, quizá, una pequeña huerta de café y pimientos en menos de una hectárea de tierra, cubriendo sus necesidades mediante el comercio en el mercado o trabajando como mano de obra para la creciente población de vietnamitas étnicos de la región. Cualquier alteración de la economía familiar –ya sea una multa impuesta por asistir a un servicio religioso o la confiscación de una porción de un arrozal- puede tener consecuencias desastrosas para la supervivencia económica de una familia.

Durante los pasados diez años, las autoridades locales han adquirido vastas fajas de tierra agrícola para su explotación comercial, forzando a veces a los agricultores indígenas montañeses a vender, o comprándolas de campesinos endeudados a precios muy por debajo del valor del mercado. La pérdida de los agricultores de sus medios de subsistencia, el pago inadecuado por la tierra y la confiscación de la propiedad por las autoridades locales han alimentado un resentimiento intenso entre los indígenas montañeses, particularmente durante la última década. Este resentimiento ha sido aumentado por el hecho de que se encuentran perdiendo terreno frente a los nuevos inmigrantes en términos de educación, empleo y otras oportunidades económicas.

747

Los disturbios en las tierras altas centrales

En febrero de 2001, varios miles de miembros de minorías indígenas (como los jarai, ede, bahnar, mnong y koho) realizaron manifestaciones en las provincias de Gia Lai, Dak Lak, Lam Dong y Kontum, de las tierras altas centrales, pidiendo independencia, la devolución de tierras ancestrales y libertad religiosa. Las autoridades vietnamitas desplegaron miles de policías y soldados para dispersar a los protestantes. Según Human Rights Watch, en los meses siguientes a las manifestaciones, las fuerzas de seguridad arrestaron a cientos de montañeses, utilizando a veces la tortura para arrancar confesiones y declaraciones públicas de arrepentimiento de los organizadores de las protestas. También tomaron como objetivo a agrupaciones religiosas, cerraron iglesias y arrestaron a líderes religiosos, categorizando al protestantismo evangélico seguido por muchos de los montañeses con una organización anti-gubernamental. En otro incidente en la aldea jarai de Plei Lao, en la provincia de Gia Lai, en marzo de 2001, después de invadir la aldea para impedir una reunión cristiana de oración durante toda la noche, las fuerzas de seguridad dispararon contra la multitud, matando a un aldeano. Luego, la policía incendió la iglesia de la aldea.

Al menos 34 de los arrestados en conexión con las protestas fueron juzgados y condenados a severas penas de prisión durante juicios realizados entre septiembre y noviembre de 2001. A comienzos de 2002, los continuos abusos en las tierras altas centrales incluyeron el hostigamiento de cristianos, maltrato de indígenas montañeses deportados de Camboya y una presencia policial represiva en las aldeas.

Aproximadamente 1.500 montañeses huyeron a Camboya, donde se les dio abrigo en dos sitios operados por el Alto Comisionado de la ONU para los Refugiados (ACNUR). Las organizaciones de derechos humanos estiman que más de 500 montañeses que huyeron a Camboya durante 2001 fueron repatriados por la fuerza a Vietnam, donde algunos fueron arrestados y golpeados por las autoridades vietnamitas.

Represión religiosa

Se dice que el protestantismo es la religión de crecimiento más rápido en Vietnam, especialmente entre los pueblos étnicos minoritarios de las tierras altas centrales y septentrionales. La mayor concentración de protestantes en Vietnam se encuentra en el norte.

Antes de la llegada del cristianismo a áreas indígenas, las creencias metafísicas de la mayoría de los montañeses se centraban en

748

torno al animismo, con la creencia de que espíritus individuales eran responsables de la aldea, el agua, las montañas, los campos de cultivo, los árboles grandes, las rocas y otros fenómenos naturales respectivamente. Se cree que estos espíritus tienen poderes inmensos y, si se los trata adecuadamente, vigilan la aldea y pueden impedir las enfermedades, las malas cosechas u otras calamidades.

A partir de los años 60 hasta comienzos de los 90, el gobierno desalentó frecuentemente las creencias y ceremonias espirituales tradicionales practicadas por las minorías indígenas, calificándolas de prácticas "supersticiosas" y "subdesarrolladas". Algunos montañeses se convirtieron al cristianismo en los años 50 como resultado del trabajo misionero americano, aunque la práctica decayó con la reunificación de Vietnam en 1975.

En los años 80, las minorías indígenas del norte de las tierras altas comenzaron a convertirse al cristianismo evangélico, en parte como resultado de emisiones radiales religiosas en lengua hmong de la Far East Broadcasting Company, con sede en Filipinas. Para 1999, los funcionarios vietnamitas estimaban que la cantidad de hmong cristianos sumaba unos 100.000 creyentes. Para muchos hmong cristianos, su Dios es conocido como Vang Chu ("señor rey"), que se asemeja a leyendas y creencias milenarias hmong sobre un antiguo rey que volvería a la tierra para salvarlos de la opresión y la pobreza. Otros hmong cristianos siguen creencias cristianas más ortodoxas.

En las tierras altas centrales, muchos indígenas fueron atraídos por un tipo particular de cristianismo durante los años 90 llamado *Tin Lanh Dega*, o "Protestantismo Dega", que reúne las aspiraciones de independencia, orgullo cultural y el evangelismo. Actualmente se estima que entre 300.000 y 400.000 indígenas de las tierras altas centrales son cristianos.

Las "iglesias caseras" no registradas de las minorías étnicas en el norte y centro de las tierras altas no están reconocidas legalmente por el gobierno. Como resultado de los disturbios en las tierras altas centrales a comienzos de 2001, el gobierno aumentó su represión contra los cristianos en las provincias de Gia Lai, Kontum, Dak Lak y Lamdong. En las provincias septentrionales de Lai Chau, Lao Cai y Ha Giang, las autoridades reaccionaron defensivamente frente a las peticiones de queja ciudadanas presentadas por los hmong para protestar contra la persecución religiosa de los funcionarios locales vietnamitas y hmong.

Se piensa que al menos cincuenta montañeses minoritarios están cumpliendo penas de prisión debido a sus creencias religiosas y/o su participación en el movimiento por los derechos a la tierra e independencia. Los grupos de derechos humanos han recibido informes de cristianos pertenecientes a minorías que han sido encarcelados,

749

multados, condenados a trabajos forzados o presionados por los funcionarios para que renuncien a su religión. Además, las iglesias cristianas minoritarias han sido destruidas y la propiedad eclesiástica fue confiscada.

Impacto de los proyectos hidroeléctricos

En junio de 2001, la Asamblea Nacional de Vietnam aprobó el polémico proyecto hidroeléctrico Son La en el Río Da (Black River o sea Río Negro), en el norte de las tierras altas, a pesar de las reservas expresadas por algunos diputados sobre los planes de seguridad de la represa (será construida en un área propensa a los terremotos) y el hecho de que desplazaría a cientos de miles de personas. En agosto, se adjudicaron US$ 660 millones para los costos de reasentamiento. Los planes iniciales requerían que más de 100.000 personas fueran reasentadas en las tierras altas centrales. Se espera que la construcción comience en 2005.

En abril de 2002, finalizó la construcción del segundo proyecto hidroeléctrico –en tamaño- de Vietnam, la represa de 720 MW de las cataratas de Yali, en el Río Sesan, en las tierras altas centrales (ver capítulo sobre Camboya). La planta energética de la represa está ubicada en Gia Lai y su embalse está en Kontum. Desde que se cerró la represa principal y se llenó el embalse en 1996-1998, las comunidades indígenas que viven a lo largo del Río Sesan, tanto en Vietnam como en Camboya, han experimentado inundaciones súbitas y fluctuaciones dramáticas en el nivel de las aguas, que resultaron en la contaminación de las aguas y la pérdida de poblaciones de peces y vegetales silvestres a lo largo de las riberas del río. Casi 7.000 personas, de las cuales el sesenta por ciento pertenecen a pueblos indígenas minoritarios (jarai, bahnar y rongao) ya han sido desplazadas por la represa. Muchas de las personas reasentadas informan sobre severa escasez de alimentos y tierras de cultivo en sus nuevas aldeas, así como también de compensación gubernamental insuficiente, conforme a un estudio de febrero de 2001 preparado por el Centro para Recursos Naturales y Estudios del Medio Ambiente de la Universidad de Vietnam (CRES).

También continuaron los planes para Sesan 3, una planta hidroeléctrica de 300 MW sobre el Río Sesan entre las provincias de Gia Lai y Kontum, en las tierras altas centrales. Además, la compañía Electricidad de Vietnam comenzó la construcción de una línea de transmisión de 500 KV desde Pleiku, en Gia Lai, hasta la Ciudad Ho Chi Minh (según algunas fuentes de Phu Lam). El proyecto energético Kanak-An Khe en el Río Ba, entre las provin-

750

cias de Gia Lai y Binh Dinh es un tercer proyecto hidroeléctrico que está en lista de espera.

Este informe ha sido adaptado en parte del informe de Human Rights Watch "Represión de montañeses: conflictos sobre tierra y religión", abril de 2002, al que reconocemos con sumo agradecimiento.

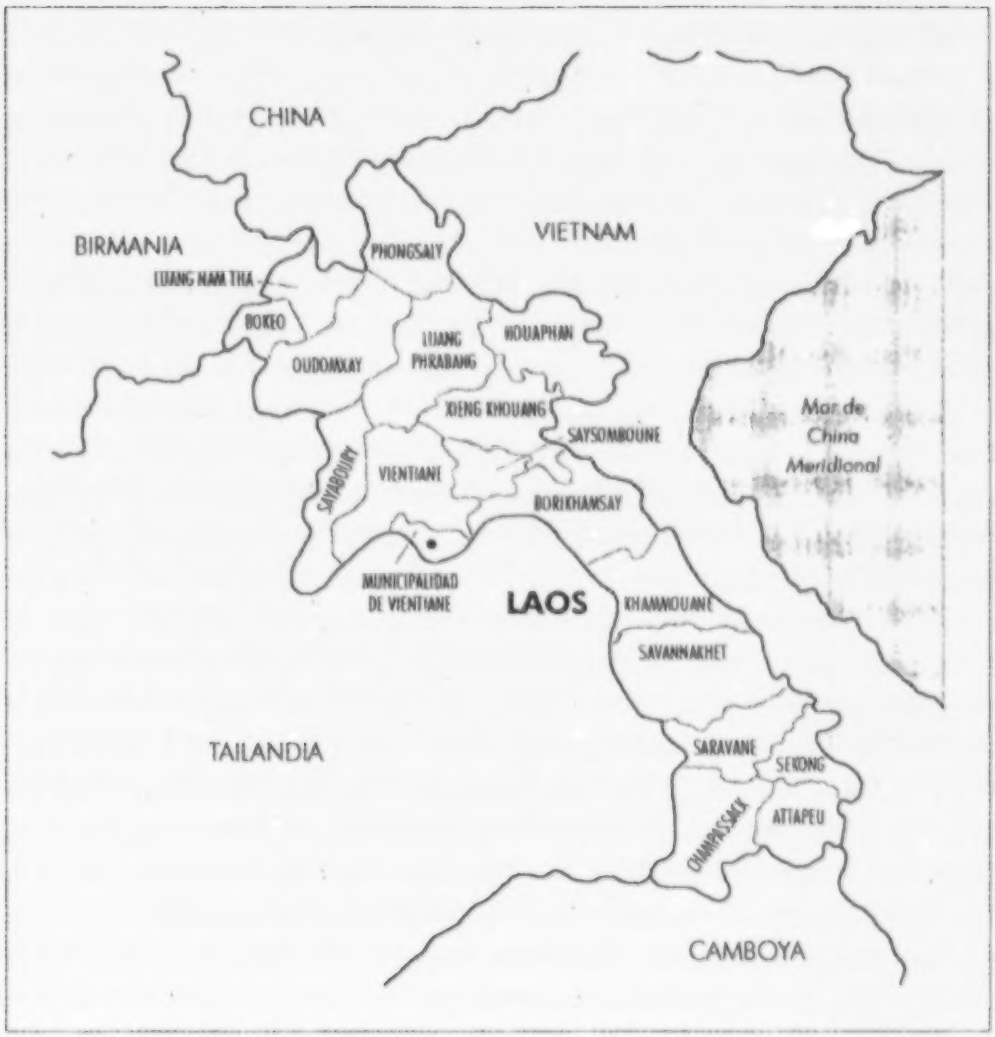
LAOS

El año 2001 ha sido un año difícil, de muchas formas, para los diversos pueblos indígenas de la República Democrática Popular de Laos (RDP LAO o Laos). Para comenzar, el gobierno de Laos, que celebró su séptimo Congreso Partidario en marzo de 2001[1] reafirmó su compromiso de continuar su política para erradicar la agricultura "swidden" o agricultura de "roza y quema". Aunque el gobierno esperaba originalmente lograr su objetivo en el año 2000, el plan es ahora detener toda la agricultura rotativa para el 2005[2]. Sin embargo, en forma privada, muchos funcionarios provinciales y de distrito reconocen que esto es improbable ya que aproximadamente el 80% de Laos es montañoso, y en muchas áreas las posibilidades de realizar agricultura del tipo de tierras bajas son sumamente limitadas.

Continúa el polémico programa de Adjudicación de Tierras y Bosques

Con relación a la política de detener la agricultura swidden, en 2001 el gobierno siguió promoviendo el polémico programa de Adjudicación de Tierras y Bosques, y en enero de 2001, el Ministro de Agricultura Forestal, Dr. Siene Saphanthong, anunció que el programa ya había sido implementado en 7.117 de las 8.500 aldeas designadas en todo el país, incluyendo 787 aldeas en 1999-2000. El Ministro dijo que el éxito de la adjudicación de tierras y bosques había sido fundamental para reducir áreas de "cultivos de roza y quema". Las áreas de tierras usadas para "cultivos swidden móviles" fueron supuestamente reducidas de 115.000 hectáreas en 1999 a 72.600 hectáreas en el año 2000, y expresó que se esperaba que en 2001 las áreas swidden

751



serían reducidas aún más[3]. La mayoría de los agricultores swidden de Laos son miembros de diversos grupos indígenas (aquí todas las personas que no pertenecen a la etnia lao), muchos de los cuales están viviendo en áreas montañosas y remotas, y aunque el Ministro no informó cuántas de las 8.500 aldeas designadas para adjudicación de tierras están pobladas por minorías indígenas, se supone que la vasta mayoría es indígena.

Planes para traslados a gran escala de reasentamiento de cultivadores rotativos

A fines de 2000 y comienzos de 2001, el gobierno de Laos, como parte de su programa de erradicación de sistema de cultivos roza y quema, diseñó un Plan Maestro de Desarrollo Agrícola. El Plan identificó tres

BEST COPY AVAILABLE

provincias que tienen todavía áreas substanciales de tierras bajas apropiadas para convertirlas en arrozales de tierras bajas, Khammouane, Savannakhet y Attapeu, todas en el centro y sur de Laos. Como hay mucho menos áreas de tierras bajas apropiadas para la conversión en arrozales en el norte de Laos, el gobierno está considerando ahora apoyar traslados a gran escala de cultivadores rotativos del norte a estas provincias. En el año 2000 y 2001, los funcionarios comunicaron a los agricultores de muchas partes del norte de Laos que todas las familias que no tuvieran al menos algún arrozal de tierras bajas tendrían que trasladarse en los próximos años. A comienzos de 2001, como parte de este esfuerzo, el gobierno solicitó a cinco líderes de la étnia hmong del norte de Laos trasladarse a la provincia más meridional de Attapeu para determinar si la tierra allí sería apropiada para que ellos y un gran número de seguidores se asentaran allí. Aunque estaban aparentemente satisfechos con la tierra de Attapeu, finalmente los funcionarios de la Provincia de Attapeu detuvieron el plan original de trasladar a 100.000 hmong del norte de Laos (principalmente de las provincias Xieng Khouang y Houaphan) a Attapeu. Aunque todavía puede haber algún traslado del norte hacia Attapeu en los años venideros, los habitantes de Attapeu no están complacidos de que los hmong se trasladen allí, porque los hmong nunca vivieron en la provincia. Existe una preocupación de que puedan surgir conflictos entre los hmong y los habitantes que hablan las lenguas tai-lao y mon-khmer, quienes son los habitantes originales de la provincia[4].

Aunque no ha sido posible eliminar toda la agricultura swidden, se informa que en algunas áreas el gobierno ha sido capaz de detener la agricultura rotativa. Por ejemplo, el 11 de enero de 2001, el Distrito Hatsaifong, en la prefectura de Vientiane, celebró una ceremonia para presentar a la aldea Nongphong un certificado que reconocía la "finalización de la agricultura de roza y quema" de la aldea[5]. Además, todavía se están haciendo ingentes esfuerzos en algunas partes del país para cambiar las costumbres de los grupos minoritarios. El Sr. Boualane Silinpanya, el gobernador de la provincia Bokeo, del norte de Laos, fue citado en el Vientiane Times por decir, "si la gente no acepta el nuevo estilo de vida, es difícil ayudarlos a salir de la pobreza, así que tenemos que modificar ciertas tradiciones que no son apropiadas para la nueva era". Continuó diciendo, "este año [2002] la provincia reasentará personas de las montañas en áreas más apropiadas para permitirles contribuir a la economía nacional y elevar sus condiciones de vida". La educación y el reasentamiento han sido citados como las áreas prioritarias de implementación en Bokeo en 2002[6].

En un taller organizado entre el 27 y 28 de diciembre de 2001, la Provincia Savannakhet, en el sur de Laos, también anunció que había

753

dispuesto 2,5 mil millones de lao kip (US$ 263.150) para limpieza de tierras para el cultivo de arroz y producción ganadera en cuatro distritos montañosos poblados mayoritariamente por pueblos de habla mon-khmer. Como parte de este plan, se informa que las tierras y bosques serán adjudicados a habitantes locales para "terminar con los cultivos de roza y quema". Según se informó, el área bajo este "método agrícola tradicional" en Savannakhet había disminuido de 5.392 hectáreas en 1996 a 4.500 hectáreas en 2001[7].

En otra conferencia relativa a la erradicación de la agricultura rotativa patrocinada por la Agencia Internacional Sueca para el Desarrollo (SIDA) a fines de 2001, el Ministro de Agricultura y Silvicultura anunció que estaba centrando sus esfuerzos en las provincias septentrionales de Luang Phrabang, Houaphan, Oudomxay, Phongsaly, Luang Nam Tha y Xieng Khouang[8]. Estas son todas provincias con un alto porcentaje de pueblos indígenas. El principal objetivo de la conferencia era *"implementar los planes para la reducción de la agricultura rotativa, la reducción de las plantaciones de opio y la emigración a causa de la pobreza de los habitantes de las áreas rurales"*. El Dr. Ty Phommasack, Director del Servicio de Agricultura Nacional y Extensión dijo:

> *La Provincia de Sayabouri* [en el norte de Laos] *ha sido más exitosa que otras provincias en la reducción de la agricultura rotativa. La provincia tiene mucha experiencia con el tratamiento del problema del cultivo rotativo, y los funcionarios están dispuestos a compartir sus experiencias con otras provincias.*

El Sr. Kongy Vonsy de la división de Agricultura y Silvicultura explicó:

> *La provincia ha tenido éxito en reducir los cultivos rotativos en casi un 100 por ciento, porque coordinó sus actividades con todos los sectores pertinentes de la provincia y se les brindó buena cooperación*[9].

El portavoz principal del Partido Popular Revolucionario de Laos, el periódico *Paxaxon*, escribió que:

> *El Gobierno asumió como central la política de erradicación de la roza y quema y de la producción de opio en su lucha para reducir la pobreza del pueblo de Laos. El deber de toda la nación es unirse a la lucha para eliminar del país las drogas y brindar a todos los grupos étnicos estilos de vida sostenibles*[10].

No obstante el Dr. Phommasack admitió: "Todavía estamos preocupados por encontrar fondos para solucionar nuestro problema [detener la agricultura rotativa][11]".

La pobreza despierta inquietudes

A pesar de lo antes mencionado, a fines de 2000 el Comité Estatal de Planificación del Gobierno de Laos publicó un importante informe llamado, "Pobreza en la RDP de Laos: Evaluación Participatoria de la Pobreza (PPA)" con el apoyo del Banco Asiático de Desarrollo (ADB). Utilizando métodos participatorios, el equipo de estudio investigó una gran cantidad de aldeas en las partes más pobres del país, la mayoría de las cuales estaban pobladas por pueblos indígenas. Este informe relata una historia muy diferente respecto a la Adjudicación de Tierras y Bosques y la reducción de la agricultura rotativa. Aunque el ADB ha sido uno de los principales partidarios de la política del Gobierno de Laos para eliminar la pobreza del país mediante la detención de la agricultura swidden, el informe expresa que

> *...en muchas de las aldeas pobres evaluadas, la implementación de la Adjudicación de Tierras no siempre ha seguido la política y ha resultado en algunas dificultades – la principal es que los ciclos de barbecho han sido reducidos sin substitutos de medios de subsistencia, causando una consecuente degradación del suelo y grandes reducciones de las producciones de arroz aunque el aporte laboral sigue siendo el mismo*[12].

El informe continúa mencionando que para compensar la reducción del período de barbecho, la mayoría de las familias han recibido arrozales que no podían ser cultivados debido a la mala calidad de los suelos y la falta de agua. Además, no hubo ninguna instancia citada por su asistencia técnica para el cultivo del arroz de llanura o los cultivos permanentes de las tierras altas. El informe expresa:

> *El resultado ha sido el empobrecimiento de las familias swidden debido a la disminución de las cosechas de arroz y, un creciente deterioro y degeneración de la fauna y los recursos forestales debido al intento de las familias de compensar la carencia de arroz, incluyendo casos de eliminación total de algunas especies de la zona. En muchas áreas los aldeanos participantes en la evaluación culpan a la Adjudicación de Tierras por ocasionar cambios ecológicos, y epidemias o pestes*[13].

Los autores del estudio sobre la Pobreza establecen finalmente que "... la implementación de la adjudicación de tierras ha sido problemática y, por tanto, aparece en el análisis como uno de los factores contribuyentes a la pobreza"[14]. Para ilustrar los problemas que ocurren, el estudio reveló que un miembro étnico khmou de la Asamblea Nacio-

nal de la Provincia de Phongsaly afirmó que un tercio de toda la población de la etnia khmou de la provincia (más de 13.000 personas) había huido de la provincia para evitar la adjudicación de tierras, porque creían que el programa resultaría en escasez de alimentos[15].

El programa de consolidación aldeana recibe fría acogida

Aunque la política del Gobierno de Laos relacionada con la erradicación de la agricultura rotativa ha sido aparentemente el principal problema que enfrentan los pueblos indígenas de Laos en el 2001, una nueva política para consolidar aldeas también surgió como un problema importante para muchos pueblos de minorías étnicas. A fines de los años 70, el Gobierno de Laos inició el *"Hom Ban"* o política de consolidación aldeana. La idea era que no deberían haber menos de 20 familias por aldea y las comunidades menores a esa cifra deberían trasladarse a otras aldeas. Esto ocurrió en muchas partes de Laos a fines de los años 70 y 80, y tuvo como resultado que grandes cantidades de aldeas ahora tienen poblaciones multiétnicas, ya que diferentes grupos étnicos fueron obligados a poblar la misma aldea. Ahora el gobierno parece haber expandido el programa, especificando que el mínimo de familias por aldea debería ser 50, aunque esta política parecer ser principalmente implementada en las provincias septentrionales de Laos. El gobierno argumenta que para brindar una infraestructura básica, que incluya caminos, escuelas y dispensarios sanitarios, es necesario que las aldeas sean mayores, para que el gasto per capita de las iniciativas de desarrollo pueda ser reducido. No obstante, el programa de consolidación aldeana ha recibido una fría acogida por parte de muchos pueblos indígenas, porque muchos no quieren trasladarse a grandes poblados, y a aldeas en que haya más de un grupo étnico. Además, muchos pueblos indígenas han señalado que cuando las aldeas son grandes, los recursos forestales y de la tierra sufren frecuentemente una presión intensa debido a las altas densidades de población humana, lo que resulta en la degradación de recursos y finalmente en dificultades para los aldeanos que son sumamente dependientes de los productos forestales no-madereros y otros recursos naturales para la subsistencia y la generación de ingresos[16].

Nueva lista de nombres para los grupos étnicos

Aunque los sistemas de subsistencia y las culturas de los pueblos indígenas siguen estando bajo una intensa presión, al menos hubo algunas noticias positivas para los pueblos indígenas en 2001. En agosto de 2000,

756

el Frente Nacional para la Construcción Nacional de Laos, la organización política del Partido que es responsable de los asuntos étnicos y religiosos del país, adoptó una nueva lista de nombres para todos los grupos étnicos de Laos[17]. Esta nueva lista es una mejora considerable con respecto a las listas previas, porque intenta aplicar nombres locales preferidos por los pueblos indígenas para los diferentes grupos y subgrupos étnicos del país. Por ejemplo, los ieu mien de la familia lingüística hmong-ieu mien son conocidos generalmente en Laos como los yao, pero como no les gusta ser llamados yao, el Frente de Laos aprobó ahora oficialmente el nombre de ieu mien para este grupo. Lo mismo sucedió con muchos otros grupos, como los brao, que son generalmente llamados lave y los j'rou que son conocido por los laosianos como laven. La nueva lista reconoce 49 grupos étnicos, incluyendo más de 100 subgrupos. Lo importante es que la nueva lista clasifica por primera vez en la historia de la RDP de Laos a todos los grupos étnicos de Laos en cuatro familias lingüísticas principales, los tai-lao, los mon-khmer, los tibeto-birmanos y los hmong-ieu mien.

Aunque los funcionarios del Frente admiten que la lista todavía no está completamente correcta, y que se necesita trabajo adicional para revisarla[18], el nuevo sistema representa un buen comienzo para mejorar la clasificación de los pueblos étnicos de Laos. Uno de los aspectos importantes de la adopción de la nueva lista ha sido que el gobierno de Laos ahora está planeando abolir los amplios términos clasificatorios usados en el pasado. Entre estos están los *lao loum* para los lao de las tierras bajas (que hablan principalmente la lengua tai-lao), *lao theung* o *lao kang* para los pueblos de las "tierras medias" (que hablan principalmente la lengua mon-khmer) y *lao soung* para los pueblos de las "tierras altas" (que hablan principalmente la lengua hmong-ieu mien y la tibeto-birmana). A fines de 2001, el Buró Político Central del Partido ya había aceptado adoptar la nueva lista, y se esperaba que la Asamblea Nacional la aprobaría a fines de 2001 o principios de 2002[19].

H. E. Tong Yeu Tho, un hmong de la Provincia Houaphan quien es Vicepresidente del Frente de Laos y responsable de los asuntos étnicos de todo el país, dijo que es necesario que el gobierno de Laos elimine el uso de los tres términos usados antiguamente para clasificar a los grupos étnicos en Laos. Dijo que los términos son muy generales para los objetivos de recabación de datos estadísticos gubernamentales. Explicó que en el pasado había sido muy difícil para el gobierno de Laos saber exactamente qué grupos étnicos están bien representados en el gobierno y cuáles grupos son los más empobrecidos, porque los tres términos étnicos clasificatorios usados en las estadísticas gubernamentales hacían imposible determinar a qué grupos se referían realmente las estadísticas. Por ejemplo, tanto los akha como los hmong han sido llamados *lao sung*, pero los grupos son muy

757

diferentes culturalmente y hablan lenguas pertenecientes a diferentes familias lingüísticas (tibeto-birmana y hmong–ieu mien respectivamente). Aunque hay más funcionarios hmong que akha, es imposible saber cuál es la diferencia real entre estos dos grupos[20].

Desarrollo minero e hidroeléctrico

En 2001, se firmaron una serie de acuerdos con inversores foráneos para nuevas concesiones mineras, la mayor de las cuales era una mina de oro y cobre programada para el Distrito Sepon, Provincia de Savannakhet, un área con una gran población indígena. El proyecto que está siendo implementado por la "Lang Xang Mineral Company" y la "Australian Oxiana Resources Company", estaba programado para comenzar a fines de 2001, a pesar del hecho de que existe una preocupación considerable con respecto a los potenciales impactos ambientales del proyecto[21].

El año 2001 fue un año tranquilo con respecto al desarrollo de energía hidroeléctrica, sin que se haya iniciado ninguna gran represa en Laos. Un proyecto polémico como la represa Nam Theum 2 en la Meseta Nakai en la Provincia de Khammouane, en Laos central (un área principalmente poblada por pueblos indígenas), permaneció en los libros del gobierno de Laos. Debido a dilaciones en la firma del acuerdo de poder de compra para vender electricidad del proyecto a Tailandia y la falta de una firme decisión del Banco Mundial con respecto a proveer una garantía parcial para los inversores extranjeros en el proyecto, el mayor de los cuales era Electricité de France International, la construcción de la represa todavía no ha comenzado[22].

Notas y referencias

1. *AFP*, marzo 13, 2001.
2. *Vientiane Times*, noviembre 20-22, 2001.
3. *Khao San Pathet Lao*, enero 18, 2001.
4. Director Adjunto de la División de Agricultura y Silvicultura de la Provincia de Attapeu. Julio de 2001. Comunicación personal.
5. *Khao San Pathet Lao*, enero 16, 2001.
6. *Vientiane Times*, enero 18-21, 2002.
7. *Vientiane Times*, enero 15-17, 2002.
8. *Vientiane Times*, noviembre 20-22, 2001.
9. Ibid.
10. *Paxaxon*, noviembre 20, 2001.
11. *Vientiane Times*, noviembre 20-22, 2001.

753

12. Poverty in the Lao PDR: Participatory Poverty Assessment, State Planning Committee, octubre de 2000.
13. Ibid.
14. Ibid.
15. Ibid.
16. Funcionarios gubernamentales y aldeanos en las Provincias de Phabang y Bokeo. 2001.Comunicación personal.
17 *Vientiane Times*, enero 4-7, 2002.
18. Ibid.
19. H.E. Tong Yeu Tho, Vicepresidente del Frente para la Construcción Nacional de Laos. Octubre de 2001. Comunicación personal.
20. Idem.
21. *Vientiane Times*, agosto 28-30, 2001.
22. *Vientiane Times*, septiembre 18-20, 2001.

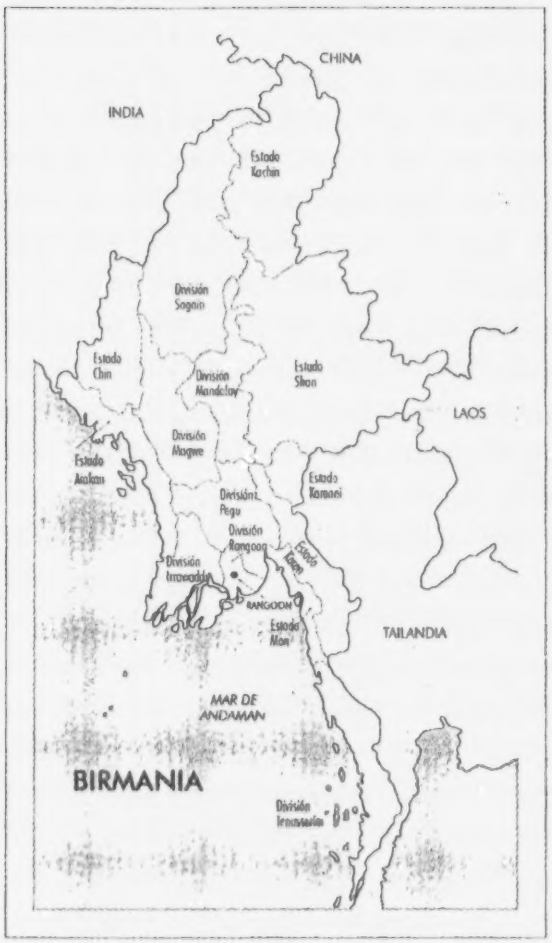
BIRMANIA

Birmania, donde las nacionalidades étnicas indígenas constituyen la mayoría de la población, ha sido gobernada –o más bien mal gobernada- por sucesivos regímenes militares desde 1962. El régimen actual, conocido como el Consejo Estatal para la Paz y el Desarrollo (SPDC), ha estado dedicando la mayor parte de los recursos de la nación al ejército para lanzarse a un conflicto armado a largo plazo, ostensiblemente para impedir la "desintegración" de la Unión.

Birmania obtuvo su independencia en 1948 después que diversas nacionalidades étnicas firmaron el Acuerdo de Panglong en 1947 para formar la Unión de Birmania. Las tensiones y conflictos entre estos grupos indígenas y el ejército provienen del desgaste de los compromisos establecidos en el Acuerdo de Panglong. En este artículo, los términos "nacionalidades étnicas" y "grupos étnicos" se refieren a los grupos étnicos no-birmanos[1] que han sido sometidos a atrocidades de guerra y diversas violaciones de derechos humanos como resultado de la agresión militar.

Conversaciones secretas, resultados invisibles

Birmania era observada con cauteloso optimismo en 2001, cuando la ONU anunció que el SPDC estaba manteniendo conversaciones secre-



tas con Daw Aung San Suu Kyi, Secretario General de la Liga Nacional para la Democracia (NLD). No obstante, en el primer trimestre de 2002, el optimismo se transformó en frustración – Aung San Suu Kyi sigue en arresto domiciliario y la situación de derechos humanos en Birmania *no* ha mejorado significativamente, particularmente para las nacionalidades étnicas no-birmanas. Es igualmente importante que las conversaciones no se han transformado en un diálogo abierto que incluya a los líderes de las nacionalidades étnicas. La paz sostenible en Birmania sólo puede lograrse como resultado de un diálogo tripartito genuino. Todos los grupos étnicos y partidos políticos deben estar representados en el proceso de reconciliación nacional para que el cambio político pueda ser acordado por todas las partes interesadas. La NLD y todos los grupos de nacionalidad étnica han reconocido enfáticamente este imperativo. No es de sorprender que el SPDC ha rehusado aceptar esa idea.

En las últimas elecciones de Birmania (1990), la NLD obtuvo 392 escaños parlamentarios, los partidos étnicos obtuvieron 83, y el Partido por la Unidad Nacional, respaldado por el ejército, obtuvo sólo 10 escaños. A pesar de una serie de "cese el fuego" sumamente publicitados, firmados entre los ejércitos de resistencia y el régimen, todavía continúan las violaciones de derechos humanos y el régimen ha evitado hablar de acuerdos de paz (de largo plazo).

Los grupos étnicos se han estado reuniendo fuera de Birmania durante largo tiempo para explorar su base común y prepararse para conversaciones tripartitas. Uno de los organismos importantes en este contexto (hay numerosas alianzas fuertes) es el Programa de Reconciliación Nacional, formado en mayo de 1999 para alentar y

BEST COPY AVAILABLE

fortalecer a todas las nacionalidades étnicas para entrar en un diálogo mutuo relativo a su propio futuro político.

En agosto de 2001 se formó el Comité de Solidaridad y Cooperación de las Nacionalidades Étnicas (ENSCC), como respuesta directa a las conversaciones entre Aung San Suu Kyi y el régimen. Compuesto por representantes de siete nacionalidades étnicas, el comité fue establecido para elaborar un marco para que los diferentes grupos trabajen en conjunto para la reconciliación nacional conforme al Acuerdo de Panglong, bajo la consigna de "autodeterminación, igualdad y democracia". El ENSCC está tratando áreas cruciales relativas a la nueva redacción de la constitución y la formación de una federación de ocho estados.

Para que los grupos étnicos trabajen efectivamente juntos para la paz futura y la democracia en Birmania, los representantes de los grupos deben tener la libertad de reunirse en Birmania. Hasta ahora, este derecho básico está suprimido.

El SPDC alega que las fricciones entre diferentes grupos étnicos son demasiado agudas para que sean capaces de trabajar juntos pacíficamente en el momento actual. Esto es obviamente mera propaganda, una afirmación que intenta justificar su continuo asidero al poder. Harn Yawnghwe, de la oficina Euro-Birmana, hizo la esencial observación de que el régimen causa premeditamente divisiones entre las "razas nacionales", "implicando que es imposible complacer a todos y, por lo tanto, es necesario tener un ejército fuerte para mantener al país unido"[2]. Harn Yawnghwe continúa afirmando que estas "razas" son construcciones del régimen opresivo del gobierno que, en realidad ha manipulado dialectos diferentes como tipos raciales diferentes. Los grupos étnicos tienen mucho más en común que lo que el régimen quiere que crean los demás.

Detenciones políticas y hostigamientos

Además de tener como blanco a la multiétnica NLD, el régimen también continuó oprimiendo a grupos políticos y activistas de las nacionalidades étnicas indígenas. El arresto documentado más reciente fue el del académico Dr. Salai Tun Than, de 74 años, en noviembre de 2001 por distribuir pacíficamente panfletos que llamaban a reformas democráticas y elecciones, en las escaleras del Municipio en Rangún. Fue sentenciado a siete años de prisión en la cárcel de Insein. La pastora Gracy, una eclesiástica baptista chin, fue arrestada por sus supuestas conexiones con un grupo rebelde en julio de 2001 y sentenciada a dos años de trabajos forzados. Más tarde fue liberada; no

761

obstante, el SPDC arrestó posteriormente a otro eclesiástico chin. Un prominente líder étnico que trabajaba estrechamente con Aung San Suu Kyi, el Sr. Gin Kam Lian, Secretario General del Congreso Nacional Zomi, fue arrestado el 19 de marzo de 2001 por razones desconocidas.

Continúan los ataques contra las figuras políticas y la mayoría de los partidos políticos. Por ejemplo, se informa que Sai Panlu, secretario de una rama municipal de la Liga de Nacionalidades Shan por la Democracia (SNLD) fue forzado a renunciar en septiembre de 2001 después de presiones del ejército[3].

Ofensivas militares y militarización

Las ofensivas militares no parecen haber cesado, ni tampoco violaciones como reasentamientos forzados, trabajos forzados y saqueos. El conflicto armado y las bajas humanas continúan en las áreas pobladas por rohingya (Estado Arakan), Estado Karen, Estado Shan, Estado Chin, Estado Mon (donde hay un "cese el fuego"), Estado Karenni y en áreas naga (Estado Kachin/división Sagaing). Es claro que el ejército está en guerra no sólo contra "insurgentes armados" sino contra personas de nacionalidades no-birmanas en general, continuando con su modelo de abuso, tortura[4] e intimidación.

Por otro lado, la falta de educación y trabajo ha creado una situación en la que los hombres se integran al ejército del SPDC o a otros ejércitos de nacionalidades étnicas o milicias como fuente de subsistencia. Cualquiera sea el mérito de la causa por la que puedan estar luchando, la realidad es que la vida en cualquier ejército en Birmania no es placentera. Es dura y llena de peligros y riesgos, la explotación es común y las opciones son mínimas.

Los agricultores en áreas de conflicto que tienen la fortuna de haberse salvado de los reasentamientos forzados se encuentran atrapados entre la exigencia de brindar suministros a los ejércitos del SPDC y a los de las nacionalidades étnicas, y sus necesidades para la existencia diaria.

Las fuerzas del SPDC y al menos 11 grupos armados étnicos siguen poniendo minas antipersonales y los madereros y los narcotraficantes ahora hacen lo mismo, lo que aumentó significativamente la cantidad de campos minados indistinguibles en áreas pobladas por comunidades de nacionalidades étnicas.

Trabajo forzado y campos de trabajo

A pesar de una orden que prohibía el trabajo forzado emitida por el régimen en octubre de 2000, las violaciones siguen sin disminuir, con "modificaciones" en algunas áreas. El Equipo de Alto Nivel de la OIT (HLT), que visitó Birmania desde el 17 de septiembre al 17 de octubre concluyó que los trabajos forzados eran practicados en áreas alejadas de Birmania central, con altos niveles en áreas militarizadas y remotas, particularmente el sur del Estado Shan y el este del Estado Karen[5]. La situación también es particularmente severa en el norte del Estado Arakan, siendo las víctimas -en forma desproporcionada- musulmanes.

El aumento de campos de trabajo está surgiendo como una tendencia peligrosa. En los años recientes, la cantidad de campos ha crecido de seis a más de 40. El trabajo de estos campos es usado para actividades generadoras de ingreso para el ejército así como también para el desarrollo infraestructural. Los civiles, especialmente aquellos de las áreas de nacionalidades étnicas, son arrestados y reciben largas sentencias por las mínimas infracciones. Luego son transferidos a campos de trabajo para trabajar en proyectos de infraestructura o plantaciones de propiedad del ejército. En su propia lógica extraña, el régimen considera esto como una estrategia para "reducir" el trabajo forzado civil.

Educación

Aunque la crisis de la educación afecta a toda la población de Birmania, las áreas fronterizas tradicionalmente desaventajadas han sido golpeadas en forma particular. El régimen canalizó los recursos nacionales en equipar al ejército a expensa de los ya empobrecidos sistemas de educación y salud. Además, muchos grupos de nacionalidad étnica son perseguidos si dan clases para enseñar su propia lengua.

El seminario independiente del Comité Nacional para la Salud y la Educación sobre "Oportunidades de los niños para aprender en las áreas de nacionalidades étnicas en Birmania", celebrado en abril de 2001 en Tailandia, trató sobre la falta de educación entre muchos niños de nacionalidad étnica no-birmana.

Personas desplazadas internamente, refugiados y emigrantes

La gente sigue siendo desplazada forzadamente, con el resultado de decenas de miles de personas desplazadas internamente (IDPs) sólo

763

en 2001. Además, al menos 800.000[6] personas han huido de Birmania como refugiados y emigrantes sin documentos. Una cantidad desproporcionada de estas personas son de nacionalidad no-birmana, perseguidos tradicionalmente por el ejército. Por ejemplo, se informa que más de 3.000 naga han huido de Birmania en mayo de 2001 después de sufrir graves violaciones de derechos humanos por parte del ejército. Aunque algunos se refugiaron en Nagaland, India, muchos más permanecieron en Birmania como IDPs, escondidos en el área selvática montañosa cerca de Lahe, división Sagaing[7].

El reasentamiento de los wa, parte de la política de migración masiva del SPDC, continúa teniendo efectos negativos sobre las personas en el este del Estado Shan. Las violaciones de derechos humanos perpetrados por wa y militares, como detenciones arbitrarias, usurpación de tierras, y saqueos, han obligado a desplazamientos masivos de comunidades shan (aproximadamente 400.000 desde 1996).

Aunque gran parte del desplazamiento en toda Birmania es un resultado directo de las actividades militares, los prejuicios racistas y la difamación constituyen también otro factor. El régimen sigue perpetuando la antigua política colonial de "dividir para reinar", apoyada en su política de birmanización, favoritismo hacia los grupos que están a favor del ejército, control de la información y la difamación abierta.

El Alto Comisionado de las Naciones Unidas para los Derechos Humanos, Mary Robinson, expresó su preocupación en febrero de 2001 públicamente y al Primer Ministro de Tailandia, Thaksin, por las condiciones de vida de los refugiados birmanos en campos de refugiados a lo largo de la frontera, en Tailandia. Su comentario es una continuación de los comentarios del año pasado de Sadako Ogata (ACNUR), quien condenó los campos como extremadamente superpoblados y con higiene deficiente[8]. Aunque Thaksin reconoció aparentemente que el estado de los campos de refugiados "era un problema" y aseguró dar prioridad a los derechos humanos, no hubo más discusión sobre el asunto[9].

Mientras tanto, el gobierno tailandés ha acelerado su programa de repatriación de inmigrantes sin documentos de Birmania, independientemente del hecho que casi todos serán vulnerables a diversas violaciones de derechos humanos. Muchos de los llamados "migrantes" son refugiados *de facto* que han huido de la agresión militar en Birmania. También en este grupo están aquellos que huyeron del trabajo forzado y el hambre, resultantes de las políticas y prácticas militares.

764

Intolerancia religiosa

Los rohingya sufren de discriminación en masa, debido principalmente a su fe musulmana. En 2001 hubo disturbios anti-musulmanes en partes de los estados de Arakan, Shan y Karen, que causaron muertes y el incendio de mezquitas y casas. Esto contribuyó considerablemente al creciente número de desplazados internos y refugiados. En abril de 2001, las autoridades militares del municipio de Maungdaw, Estado Arakan, ordenaron la destrucción de 70 mezquitas y escuelas religiosas mientras que se construyen pagodas y monasterios budistas a un ritmo acelerado.

Se ha alegado que los ataques anti-musulmanes han sido orquestados por el ejército como medio para desviar el descontento. Ha habido informes que algunos de los "monjes" involucrados en la violencia religiosa eran civiles dirigidos por comandantes militares[10]. También se informó que la inteligencia militar ha estado publicando panfletos para intensificar el sentimiento anti-musulmán[11]. Después del 11 de septiembre el sentimiento anti-musulmán ha sido un regalo para el régimen, que lo alentó a lanzar una ofensiva mayor contra los activistas rohingya, ya que el régimen vinculó rápidamente a los grupos rohingya con Al Qaeda.

Los cristianos, en su mayoría de antecedentes chin y naga, son también objeto de persecución e índices más elevados de violaciones de derechos humanos, como trabajos forzados. Un informe del Departamento de Estado de los EE.UU. destacó la violenta prohibición de la propaganda cristiana, restricciones a publicaciones locales de material religioso, incluyendo la Biblia y las dificultades extremas enfrentadas para construir nuevas iglesias[12].

Las mujeres

El ejército sigue ejerciendo violencia contra las mujeres, y las mujeres de nacionalidades étnicas son el objetivo primario. Todas las mujeres no-birmanas viven en constante temor a la violencia, y las mujeres rohingya experimentan probablemente los peores abusos. La experiencia y temor a la violencia es un importante factor que empuja a la emigración femenina de Birmania.

El ejército tiene también una política de alentar a los soldados que ocupan áreas étnicas a casarse con mujeres locales, especialmente con aquellas de familias influyentes. Esto es considerado como un medio para asegurar la "lealtad" de las nacionalidades étnicas hacia el ejército. El casamiento forzado continúa siendo una tendencia. Esto ocurre en situaciones de violación o abuso sexual, cuando el soldado

765

ofensor "redime" la situación a través del casamiento. Esto es considerado generalmente un mal menor, porque si las violadas presentan denuncia, son frecuentemente golpeadas o multadas. El casamiento forzado también ocurre cuando un soldado se "enamora" de una joven local y no acepta un no como respuesta.

Ante tal inseguridad, no es de sorprender que un importante número de mujeres de nacionalidad étnica sean vulnerables a ser traficadas en la construcción, hospitalidad, industrias domésticas y del sexo en países vecinos.

A pesar de los obstáculos, se ha formado una cantidad de grupos de mujeres étnicas en los años recientes. La Liga de Mujeres de Birmania, un grupo que abarca grupos de mujeres étnicas y pro-democráticas, ha comenzado a tratar temas que afectan a las mujeres birmanas en el ámbito local e internacional.

Notas

1 En inglés se distingue entre *Burman* (el grupo étnico) y *Burmese* (los ciudadanos de Birmania).
2 **Yawnghe, Harn. 2001.** "The Non-Burman Ethnic Peoples of Burma". Euro-Burma Office, 8 de diciembre.
3 *Shan Herald Agency for News*, 18 de septiembre de 2001. "One more Shan party official forced to resign".
4 Ver *CNF*, 18 de mayo de 2001. "Battle news from CNF".
5 Esto es contrario a las declaraciones realizadas por la junta que la mejora de caminos y el creciente uso de mulas han disminuido el trabajo forzado.
6 *Burma Net*, 19 de agosto de 2001. "Official refugee population in Thailand tops 136.000".
7 La vida extremadamente ardua de la selva está agravada en esta época por las lluvias. [*Burma Courier*, 7 de junio, 2001. "Relief Team Reaches Nagas Burned out of Their Homes"].
8 Los funcionarios tailandeses defendieron los campamentos diciendo que las condiciones eran análogas a las de las aldeas tailandesas cercanas.
9 *Reuters*, 28 de febrero de 2001.
10 *DVB*, 22 de mayo de 2001. "Inter-religious clashes spreading".
11 *ARNO*, 7 de junio de 2001.
12 *Burma Courier*, 27 de octubre de 2001.

766

NAGALIM

Las conversaciones de paz entre el gobierno de India y los nagas se han movido a paso muy lento. Su búsqueda de cinco años por una solución pacífica para el prolongado conflicto ha enfrentado, muchas veces, problemas aparentemente insuperables. Aunque esos problemas prueban la fortaleza política y convicción de las partes, y la habilidad de negociación de los participantes directos, también atraen la atención pública sobre estos temas. Aparentemente, ambos lados han ganado una experiencia invalorable y han fortalecido su compromiso con el proceso de paz en marcha.

El alto el fuego

A mediados de 2000, El Consejo Socialista Nacional de Nagaland Isak-Miuvah (NSCN-IM) notificó a India que suspendería el alto el fuego a menos que India presentara inmediatamente un gesto público para mantener el entendimiento original de que el alto el fuego se aplicaría a todas las áreas en donde sus fuerzas habían estado comprometidas. Esta advertencia se presentó con dos semanas de anticipación. Los naga seguían indignados por los frecuentes ataques a miembros de su movimiento de resistencia, igual que a su población civil, por fuerzas armadas indias bajo los gobiernos locales estatales de Manipur y Assam. Durante una semana entera, los medios de difusión indios se concentraron en este tema ya que el Primer Ministro y el Ministro del Interior celebraban consultas a puertas cerradas con los Ministros en Jefe de los estados del nordeste, incluyendo Manipur y Assam, y comandantes militares y funcionarios civiles.

A continuación de estas agitadas consultas, el gobierno de India envió su representante a firmar el Acuerdo de Bangkok el 14 de junio de 2001 con el líder del NSCN-IM. El acuerdo declaraba que el gobierno de la India y el NSCN-IM cumplirían un alto el fuego "sin límites territoriales", en otras palabras en toda la tierra ancestral de los naga todavía en posesión de India.

La firma de este acuerdo, se creyó, significaba el firme compromiso de India de llegar a un arreglo negociado. Sin embargo, algunas de las comunidades vecinas de la región, particularmente las dos comunidades hindúes dominantes, los meitie de Manipur y los assamese de Assam, no estaban complacidas con el acuerdo. Temían que la extensión geográfica del alto el fuego significara un primer paso para dividir los estados existentes para crear un *Nagaland* mayor. Algunos respondieron violentamente. Agitadores meitei en Imphal, la capital

767

de Manipur, se lanzaron al saqueo y al incendio, y algunos de los líderes assamese amenazaron con salir a las calles. Con los medios de difusión agitando el fuego, la situación amenazó con convertirse en una bola de nieve y comenzaron a sentirse divisiones dentro del gobierno central de India. Dándose cuenta de las dificultades enfrentadas por el gobierno central para manejar la situación, el NSCN-IM aceptó la solicitud de la India de volver a redactar el acuerdo de Bangkok. Esto suministró el tan necesario espacio político para que el gobierno de India procediera con el proceso de paz.

Violación del alto el fuego

El proceso de paz sufrió otro choque el 16 de marzo de 2002 cuando once miembros del NSCN-IM fueron asesinados cerca del mercado Pallel, un pueblo naga en Manipur, por tropas del 12º Batallón de Reserva Indio. Algunos de sus compañeros lograron escapar. En represalia, el Comisionado Adjunto del distrito fue secuestrado por el Frente Unido de Liberación Kuki (UKLF), un aliado de NSCN-IM. Los ocho agentes de seguridad del comisionado fueron desarmados y dejados en libertad.

Más tarde se supo que el NSCN-IM había notificado al gobierno de la India que el UKLF y sus cuadros habían detenido al oficial para asegurar el retorno inmediato de todas las pertenencias de los camaradas caídos, incluyendo sus armas y municiones, y una minuciosa investigación del incidente para castigar a los involucrados en el asesinato a sangre fría. El gobierno indio no hizo ningún operativo militar para rescatar al oficial y, después de dos semanas, cumplió con las antedichas condiciones, después de lo cual el oficial fue liberado. Se sospecha que sentimientos anti-naga de parte de los meitei radicales dentro del ejército fueron la causa de la matanza.

BEST COPY AVAILABLE

Según se informó, el 12º Batallón de Reserva Indio está principalmente integrado por militantes meitei rendidos y se dice que su comandante es también meitei.

India formará un "grupo de ministros" para las conversaciones de paz

Las reuniones de los equipos negociadores de la paz y el Primer Ministro de India con los líderes naga durante el año pasado tuvieron como resultado un importante progreso en la generación de confianza y avance en el respeto mutuo. Las conversaciones comenzaron a tocar lentamente los temas principales. El anuncio de India del 19 de febrero de 2002 que estaba planeando formar un "grupo de ministros" para estudiar los temas presentados a la mesa de negociaciones es considerado como un paso en la dirección correcta. La incapacidad de los representantes del gobierno indio de prepararse bien ha sido uno de los principales obstáculos para el progreso de las negociaciones. Esta decisión, si es implementada, puede ayudar a superar este problema.

La reconciliación con la sociedad naga

Uno de los acontecimientos más importantes durante el actual alto el fuego es el proceso de reconciliación que las organizaciones civiles naga han realizado desde el cese de la actividad militar en su tierra. La campaña de reconciliación no sólo está dirigida a superar los pasados rencores entre los naga y curar las heridas de guerra, está también dirigida a conceder a todas las partes un rol significativo en la reconstrucción social..

El 20 de diciembre de 2001, la sociedad civil naga organizó una gran ceremonia para marcar el "Proceso de Reconstrucción Nacional". Conducido por el Naga *Hoho* (el consejo pan-naga) y los *hohos* tribales reunió a más de 10.000 naga de todas sus tierras ancestrales en Assam, Manipur, Arunachal Pradesh y Nagaland en India y de Birmania, en Kohima, la capital del estado de Nagaland.

Esto fue seguido por una reunión de 65 representantes naga en Bangkok durante 10 días de amplias consultas y opiniones a granel relativas a las actuales negociaciones con India. Casi todos los líderes superiores del NSCN-IM, liderados por el Presidente Isak Chishi Swu y el Secretario General Thuingaleng Muivah, participaron activamente en la consulta con los representantes de la sociedad civil naga. La reunión de consulta fue facilitada por el Pacto de los Pueblos Indíge-

769

nas de Asia (AIPP) con apoyo del Grupo Internacional de Trabajo sobre Asuntos Indígenas (IWGIA).

El éxito de la consulta nacional y la reconciliación entre los naga ha tenido indudablemente un impacto sobre sus vecinos y el gobierno indio. Como regla, los líderes indios, e incluso, la "inteligencia" india, conocen muy poco sobre Nagalim y su pueblo. Lo que piensan o hacen en relación con los naga está mayormente basado en presunciones. Sin embargo, los recientes movimientos de masas para la reconciliación y la construcción de la nación en todo Nagalim han comenzado a llamar su atención.

Aquellos miembros de los meitei de Manipur y de las comunidades assamese que están opuestos a la unificación de los naga observan este desarrollo con preocupación. Los violentos sucesos de junio de 2001 en Imphal, Manipur, tienen que ser entendidos en este contexto. Afortunadamente, otros no comparten esos sentimientos. Los kuki, por ejemplo, han alcanzado un entendimiento amistoso con los naga. Muchos otros representantes de pueblos indígenas de la región, incluyendo los mizo, hmar, beite, khashi y jaintia, los borok, bodo, dafla, aka y otros han elogiado calurosamente a la sociedad civil naga por la madurez con que ha manejado su difícil situación.

770

BEST COPY AVAILABLE

BANGLADESH

En el año 2001 no se observó ninguna mejora en la situación de los pueblos indígenas de Bangladesh. El nuevo gobierno no tiene obviamente la voluntad de reconocer a los pueblos indígenas del país y sus derechos ni encarar las constantes violaciones de derechos humanos o implementar el Acuerdo de Paz forjado por el gobierno previo con los líderes del movimiento indígena de resistencia en Chittagong Hill Tracts en 1997. Este capítulo presenta un informe sumario sobre algunos de los acontecimientos más importantes del año pasado en Chittagong Hill Tracts (CHT) y en las áreas khasi y garo del norte de Bangladesh.

Chittagong Hill Tracts

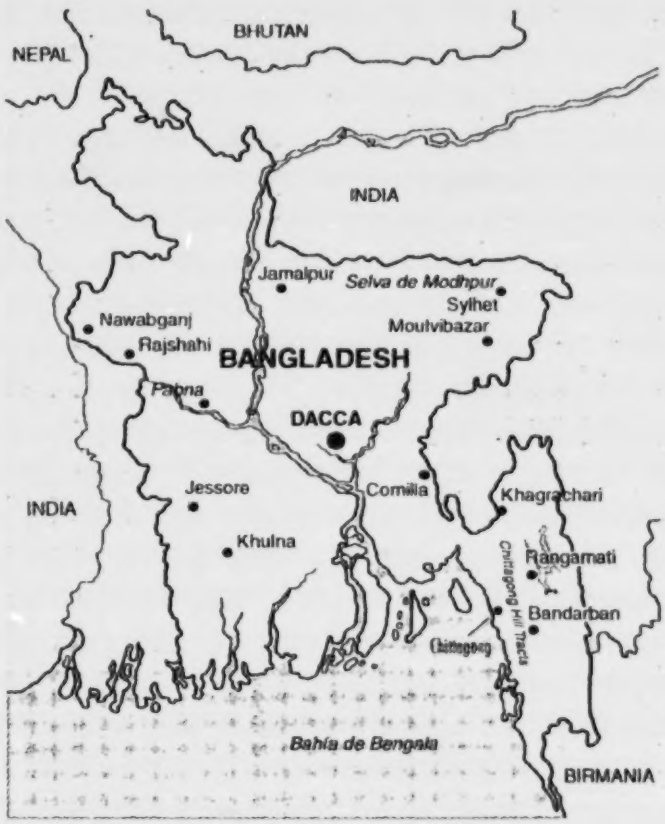
El proceso de paz

En diciembre de 1997, después de más de treinta años de violencia, e intensas y prolongadas negociaciones, el Gobierno de Bangladesh (GOB) y el *Parbattya Chattagram Jana Samhati Samiti* (PCJSS-Partido Unido de los Pueblos de CHT), la fuerza motora tras la lucha armada indígena, concluyeron un Acuerdo de Paz. El Acuerdo de 1997 incluye elementos para el autogobierno indígena dentro del marco institucional de un ministerio propio, un consejo regional, consejos de distrito y las autoridades tradicionales indígenas de los rajas.

Sin embargo, el Consejo Regional que tiene que ser el principal organismo coordinador y asesor para CHT no ha recibido suficientes recursos o autoridad para funcionar efectivamente y de las 22 áreas de trabajo que tienen que ser transferidas a los Consejos de Distrito de la Montaña, sólo tres ya están bajo su supervisión: educación primaria, bienestar social y salud. La implementación del Acuerdo ha sido espantosamente lenta en cuanto a tardanza y negligencia, y casi cuatro años y medio más tarde, la situación es otra vez tensa, con incidentes esporádicos de violencia entre la continua presencia del ejército y los colonos, quienes permanecen firmemente atrincherados en CHT.

Aunque el Acuerdo de Paz es aceptado por la mayoría de los jumma como un paso adelante necesario, no ha sido bienvenido por todos. Una facción disidente del movimiento estudiantil formó el Frente Democrático de los Pueblos Unidos (UPDF) en 1998 porque están convencidos de que el Acuerdo de Paz no cumple con las demandas jumma de autodeterminación. Aunque tanto el JSS y el UPDF sostienen firmemente el derecho de autodeterminación para los

772-



Demostración contra el Eco-Park en las tierras ancestrales garo y khasi.
Foto: Sanjeeb Drong

BEST COPY AVAILABLE

indígenas jumma (objetivos a corto plazo vis-a-vis objetivos a largo plazo), su diferencia de enfoque ha escalado hasta hostilidades armadas, y ambas partes identifican miembros de la otra parte para ataques de represalia. En esta deteriorante situación, el 16 de febrero de 2001, tres miembros de un proyecto de carretera financiado por los daneses en CHT (un ciudadano británico y dos daneses), fueron secuestrados y pidieron rescate por ellos. Luego fueron liberados[1]. A pesar de diversos esfuerzos realizados por líderes indígenas y ancianos para resolver este conflicto interno, se ha convertido en un tema crítico en el proceso de paz.

Acontecimientos políticos

La disputa JSS-UPDF brinda una oportunidad para que intereses externos se involucren en los asuntos de CHT, un legado de la práctica colonial británica "dividir para reinar". La disputa ha sido alentada, si no apoyada, por partidos políticos dominantes que desean socavar el proceso de paz sobre la base de que favorece a los pueblos indígenas. Sin embargo, esto tiene que observarse en el contexto de una rivalidad de hace mucho tiempo entre los dos principales partidos políticos de Bangladesh, la Liga Awami y el Partido Nacionalista de Bangladesh.

En octubre de 2001, en las elecciones generales celebradas en Bangladesh, llegó al poder una alianza conducida por el Partido Nacionalista de Bangladesh (BNP) con una mayoría absoluta. El actual gobierno es liderado por Begum Khaleda Zia (Primera Ministra desde 1991 a 1996). El Acuerdo de Paz de 1997 es un resultado de negociaciones iniciadas durante su período en funciones, y concluido por su sucesor, Sheikh Hasina Wajed.

Las elecciones en CHT fueron un asunto polémico y boicoteadas por el JSS. Su principal objeción era que las elecciones fueran celebradas sobre la base de una nueva lista de votantes preparada en mayo-junio de 2000. Esta lista de votantes incluía a colonos, empresarios, las fuerzas armadas y paramilitares y otras personas no-indígenas que no eran "residentes permanentes" de CHT, mientras que excluía a los jumma desplazados internamente y refugiados repatriados.

> *El Acuerdo también previó que sólo 'residentes permanentes' de Chittagong Hill Tracts tendrían derecho al voto. Conforme a Shantu Larma [líder del JSS Jyotirindra Bodhipriyo Larma], aproximadamente 700.000 indígenas y 100.000 bengalíes son 'residentes permanentes'. El líder alega que aproximadamente 500.000 personas, cuyos nombres figuran en la lista de votantes, son residentes no-permanentes, incluyendo a 100.000 empleados del gobierno y personal de seguridad, y que a estas personas no se les debería permitir votar en la región*[2].

A pesar de las demandas del JSS para anular la lista de votantes de 2000 y preparar una nueva, las elecciones se realizaron igual en CHT. Había una serie de candidatos para los tres escaños de CHT, incluyendo personas de UPDF, BNP y Liga Awami. Los candidatos electos para los tres distritos de CHT son los siguientes: dos miembros indígenas – Moni Swapan Dewan de Rangamati (Alianza BNP) y Bir Bahadur de Bandarban (Liga Awami); y uno no-indígena – Abdul Owadud Bhuiya (Alianza BNP). No obstante, ninguno de los miembros indígenas del parlamento fue designado para encabezar el Ministerio de Asuntos de CHT, creado bajo el Acuerdo y la Primera Ministra retiene la cartera de CHT bajo su directa supervisión; una indicación de la continua importancia y sensibilidad de la región.

Durante las negociaciones de paz, el BPN fue abierto en su crítica de que el entonces gobierno de la Liga Awami concluyera el Acuerdo. Durante el período preelectoral declaró que restauraría la paz en CHT asegurando la coexistencia pacífica entres los indígenas y los habitantes no-indígenas[3]. Después de las elecciones, en diciembre de 2001, en una reunión con el JSS para discutir la implementación del Acuerdo, el ministro de Leyes, Justicia y Asuntos Parlamentarios les informó la decisión del gobierno de revisar el Acuerdo de Paz. Esto se haría para asegurar que el Acuerdo está en conformidad con la soberanía y la constitución nacional de Bangladesh. Dentro del contexto de declaraciones anteriores del BNP de que el Acuerdo favorece a los pueblos indígenas y no protege adecuadamente los derechos de los colonos de las llanuras en CHT, hay una gran preocupación entre los pueblos indígenas a pesar de las afirmaciones del gobierno de que "mantendrá la cultura, tradición y estilo de vida de los [indígenas]"[4]. La situación sigue siendo incierta.

Tierras y bosques

El tema central en CHT está relacionado con los derechos a la tierra y a los recursos. En este contexto son importantes los siguientes acontecimientos.

Una de las primeras herramientas usadas por los sucesivos gobiernos para apoderarse de las tierras de los jumma fue concebir una política *forestal* para crear bosques protegidos y reservados, p. ej., bosques gubernamentales de los bosques naturales existentes en CHT. Esto asegura que los pueblos indígenas se ven limitados (protección) o impedidos (reserva) en el uso, manejo y acceso a los bosques, sus tierras y recursos y hacerlo es contravenir la ley forestal y enfrentar el encarcelamiento y/o multa. Comenzado por los británicos en 1860, el modelo de manejo de tierras y bosques ha permanecido esencialmente centrado en el estado y "colonialista", con una importante

321

diferencia: durante el período británico, la inmigración a CHT estaba estrictamente controlada y los no-residentes no podían adquirir tierra en CHT[5].

Esta política continúa y recientemente, en 1992, el ministerio de Medio Ambiente y Bosques (MOEF) emitió una serie de notificaciones oficiales para crear más bosques reservados en CHT – para la reforestación y protección del medio ambiente. El área total era de 220.000 acres; entre 1996-98 casi la mitad de esta área había sido declarada como reserva forestal y el impacto sobre los pueblos indígenas es severo porque incluye parcelas registradas de pequeños agricultores, granjas, tierras de cultivo en proceso de registro, y bosques y áreas de pastoreo detentados conforme al derecho consuetudinario[6]. El Comité para la Protección de Bosques y Derechos a la Tierra de los pueblos indígenas en CHT ha estado haciendo lobby con el gobierno y se reunió con el nuevo ministro de medio ambiente y bosques en 2001 para solicitar la revocación de las notificaciones y reparaciones, pero a pesar de las promesas del ministro hasta el momento no se ha logrado nada sustancial. Una enmienda reciente de las leyes forestales – la Ley Forestal (Enmienda) de 2000 – indica que el gobierno continuará su enfoque regulatorio y policíaco con respecto al manejo de bosques.

Un importante tema en CHT es el de la *tierra adjudicada/ocupada por los colonos.*

> *Unos cuantos miles de acres de reserva forestal que contienen tierras mixtas y montañosas fueron abiertos para los colonos, pero esta tierra apenas sumaba un décimo de lo requerido para el asentamiento (mayo 1984). El resto fue asegurado mediante la expulsión de los* paharis *[pueblos indígenas] de sus tierras tradicionales, violando gravemente sus derechos tradicionales y afectando su estilo de vida. El alegato del gobierno de que los bengalíes han sido asentados en tierras del Gobierno (tierra khas) es objeto de diferentes interpretaciones. Lo que el gobierno considera como tierra khas es esencialmente la tierra-jhum tradicional y bosques usados por los paharis para la agricultura*[7].

Este tema no ha sido resuelto y es la causa de tensión y conflicto en CHT. Como resultado del programa de reasentamiento y la militarización, el ejército ocupa tierra para objetivos militares, y muchos pueblos indígenas están *desplazados internamente.* Algunos de ellos han sido desplazados en una cantidad doble a la de los desplazados por la represa Kaptai, y enfrentan muchas dificultades porque, siendo principalmente agricultores, son dependientes de su tierra para su supervivencia.

Un elemento adicional son las dificultades de los jumma que retornaron a CHT de los campamentos de refugiados de la India sobre la base de dos acuerdos de rehabilitación-repatriación con el gobierno

(1992 y 1997). Gran parte de sus tierras están actualmente ocupadas por familias colonas que se niegan a devolverla a los propietarios legales. Los refugiados retornados no son provistos con raciones alimenticias u otros beneficios, contrariamente a las familias colonas y esta diferencia de tratamiento y enfoque ha exacerbado las ya existentes tensiones. Se creó un Equipo de Tareas para supervisar y administrar la rehabilitación de los desplazados internos y los refugiados. Sin embargo, el director previo del Equipo de Tareas tomó la polémica decisión de incluir a los colonos entre los desplazados internos, oponiéndose a las objeciones de otros miembros del Equipo de Tareas. El nuevo gobierno liderado por el BNP todavía tiene que nombrar un jefe del Equipo de Tareas y está por verse si y cómo la nueva cabeza del equipo de tareas resolverá este polémico tema.

Los Consejos del Distrito Montañoso van a asumir la principal responsabilidad por la administración de la tierra conforme al Acuerdo. Sin embargo, los derechos a tierra y recursos no han sido transferidos a los Consejos de Distrito y siguen bajo la autoridad de la administración civil. Los comisionados adjuntos, que constituyen los principales funcionarios de la administración civil en CHT, siguen adjudicando y transfiriendo tierras a personas no-indígenas en directa contravención con el Acuerdo.

El Acuerdo también prevé el establecimiento de una *Comisión de Tierras* para adjudicar las reivindicaciones de tierras en CHT conforme con las "leyes, usos y prácticas locales". Será encabezada por un juez retirado de la alta corte y sus miembros tienen que incluir a los tres gobernantes/rajas tradicionales, el presidente del consejo regional y los consejos de distrito montañosos. En noviembre de 2001 fue nombrado un nuevo comisionado – Juez (Retirado) AM Mahmudur Rahman y se estableció una oficina principal en Khagrachari (las oficinas regionales tienen que ser establecidas en Bandarban y Rangamati).

Sin embargo, hay divergencias entre el Acuerdo y la legislación habilitante – la Ley de Solución de las Disputas de Tierra en CHT de 2001. El Consejo Regional ha rechazado la Ley sobre la base de 19 objeciones que incluyen: (i) los poderes arbitrarios del presidente: su decisión es final en ocasión de falta de consenso entre los otros miembros; (ii) la exclusión de los refugiados jumma que retornaron a CHT bajo el acuerdo de repatriación de 1992 del ámbito del trabajo de la Comisión de Tierras; (iii) la exclusión de los jumma desplazados internamente del ámbito de la Ley, y (iv) que los otros miembros de la Comisión de Tierras no han sido formalmente nombrados. Se considera que la Ley (tal como fue aceptada) facilita la legalización de la ocupación de los colonos de las tierras de los pueblos indígenas. Sin embargo, la Comisión está todavía en sus comienzos y queda por verse cómo resuelve la cuestión de la tierra en CHT de una manera justa y objetiva.

777

El ejército

Las fuerzas armadas siguen en CHT y están intensificando su presencia. El gobierno argumenta que la presencia del ejército es necesaria para mantener la ley y el orden, aunque está en directa contravención con el Acuerdo de Paz que estipula la retirada de todos los campamentos militares y paramilitares de CHT con la excepción de seis acantonamientos militares permanentes y la fuerza de seguridad fronteriza (Artículo 17 (d)). Desde marzo de 2002, de un total de 520 campamentos en CHT, se estima que 31 han sido desmantelados hasta ahora. Además, las fuerzas armadas continúan ejerciendo el control en asuntos civiles, p. ej., a los estudiantes indígenas se les requiere un certificado de no-objeción del ejército para la admisión a las universidades y otras instituciones de educación superior. Durante el conflicto de mediados de los 70 hasta 1997, hubo persistentes informes de violaciones de derechos humanos cometidas por las fuerzas armadas contra los pueblos indígenas, generalmente en connivencia con los colonos. Esto ha incluido matanzas masivas, incendios, saqueos y violaciones. En su informe anual de 2001, Amnistía Internacional menciona las violaciones de derechos humanos que ocurrieron en CHT y señala que el gobierno no llevó a los responsables ante la justicia.

Sigue habiendo informes de incidentes violentos por parte de las fuerzas armadas, en connivencia con los colonos. Entre estos se incluye un ataque a aldeas de refugiados jumma en Dighinala el 18 de mayo de 2001, donde hubo casas incendiadas y saqueadas; la operación militar del 22 de mayo de 2001 en la aldea de Barachandra en Matiranga en busca de "terroristas" resultó en el maltrato y ataques a los aldeanos, incluyendo la violación brutal de tres mujeres que tuvieron que ser hospitalizadas, y el ataque incendiario a aldeas jumma en Ramgarh el 25 de junio de 2001 en el que un grupo de indígenas fue asesinado y muchos huyeron para buscar refugio en India. El Comité de la ONU sobre la Eliminación de la Discriminación Racial, al examinar el informe de Bangladesh expresó su preocupación sobre las violaciones de derechos humanos por las fuerzas de seguridad presentes en CHT, como arrestos arbitrarios, detención, y maltrato. Recomendó que el gobierno implemente medidas efectivas para garantizar que todos los habitantes de Bangladesh, sin distinción de raza, color, ascendencia u origen nacional o étnico sean protegidos contra la violencia y el daño físico (CERD/C/304/Add.118).

Como una indicación de su futura presencia en CHT, las autoridades militares han adquirido unos 65.793 acres de tierra en los distritos de Bandarman y Rangamati para centros de entrenamiento de artillería y fuerza aérea, campamentos y acantonamientos. Siguen firmemente atrincherados en CHT.

Discriminación religiosa

El tema de la discriminación religiosa y su influencia sobre la (lenta) implementación del Acuerdo de Paz fue planteada por el Relator especial de la ONU para la eliminación de todas las formas de intolerancia religiosa, en su informe de agosto de 2000 a continuación de una visita a CHT.

El BNP está actualmente en el poder, con el apoyo de una coalición de partidos políticos que incluye el Jamat-e-Islami y el Islami Oikya Jote, ambos partidos fundamentalistas islámicos. Estos dos partidos, y otros, están adquiriendo un creciente interés activo en CHT y están dedicados a construir mezquitas, madrassahs (escuelas islámicas religiosas) y a la asistencia a los colonos para consolidar más firmemente su presencia en CHT. Hay más de 300 mezquitas y madrazas solamente en el Distrito de Khagrachari financiadas por islamistas nacionales e internacionales, tal como la Fundación Islámica de Bangladesh y la organización Al Rabeta[8]. No es necesario decir que esto es una causa de gran preocupación para los pueblos indígenas que consideran estos acontecimientos como otro elemento en su colonización y dominio por parte de la población mayoritaria. Esto tiene que ser analizado dentro del contexto del período de conflicto 1974-97 cuando se incendiaron muchos templos, los monjes eran golpeados y asesinados y muchos jumma, en particular mujeres y niñas, fueron forzados a convertirse al islam generalmente después de violación y otros actos de violencia. Además, los nombres jumma de lugares están siendo reemplazados por nombre de orientación bengalí-musulmana. Las actividades de los partidos islámicos siguen sin impedimentos.

El movimiento indígena

Hay una serie de organizaciones indígenas trabajando en CHT. Pero sus esfuerzos son obstaculizados por los requisitos de registro en el buró de ONGs. Esto ha funcionado como un obstáculo para que las organizaciones indígenas puedan obtener ayuda exterior para realizar sus actividades porque un certificado de ONG es un prerrequisito para acceder a la financiación extranjera. En contraste directo, a pesar de las objeciones de los pueblos indígenas y demandas de mayor supervisión, las ONGs nacionales están operando, como el Comité de Mejora Rural de Bangladesh (BRAC), organizaciones islamistas y laícas. Las organizaciones indígenas creen que se trata de una práctica discriminatoria para dificultar sus actividades.

Las organizaciones indígenas en CHT formaron el Foro de las ONGs de Hill Tracts que opera como una organización de coordinación. A nivel nacional, los jumma han establecido vínculos con otros

grupos indígenas en Bangladesh. El Foro de los Derechos de los Pueblos Indígenas (Foro Adivasi de Bangladesh) fue establecido a iniciativa del líder del JSS y Presidente del Consejo Regional, el Sr. Shantu Larma. Cada año, los pueblos indígenas de Bangladesh celebran el 9 de agosto como el Día Internacional de los Pueblos Indígenas del Mundo y esto ha sido reconocido como un evento anual. También ha ayudado a atraer la atención pública sobre la situación de los pueblos indígenas de Bangladesh, y el gobierno, bajo el Primer Ministro Hasina, ha reconocido a los pueblos indígenas como tales. Los indígenas jumma son también activos a nivel regional e internacional, incluso en la ONU y eventos relacionados, y han creado vínculos con pueblos indígenas de otras partes del mundo.

Asesinato de una mujer garo en el bosque Modhupur

Las comunidades indígenas garo del bosque de Modhupur ahora deben temer por su vida. Durante largo tiempo han enfrentado graves amenazas de la mayoría de la población bengalí que quiere que se los expulse de sus territorios ancestrales para apropiarse de su tierra. En su último ataque, el 20 de marzo de 2001, Gidita Rema, una joven madre garo, fue apuñalada a muerte por los colonos bengalíes Habibur Rahman, Mofij Uddin y Juran Ali. Los aldeanos dijeron que Gidita tuvo que pagar con su vida porque siempre había protestado contra los crueles actos de los bengalíes en su aldea. Parece que el crimen está relacionado con el rescate de Nomreta Rama, una niña garo de 15 años que había sido secuestrada, violada, forzada a convertirse al islam y casarse con un colono local bengalí Mofij Uddin. La niña había sido rescatada por la familia de Gidita. El 18 de marzo el presidente de la unión local parishad[9], Zakir Hossain, convocó a una reunión para tratar el caso. En la reunión el mismo presidente forzó a Gidita a devolver a Nomreta a Mofij. Cuando Gidita se negó a hacerlo, el presidente le dijo furioso que su casa iba a ser incendiada y que la matarían si no obedecía sus órdenes. Dos días después Gidita Rema fue asesinada.

La policía no arrestó a los asesinos. El líder local garo, Anthony Mangsang protestó frente a la estación de policía y el padre de Gidita dijo que la policía incluso ayudó obviamente a escapar al asesino Habibur.

Parque Ecológico inaugurado a pesar de protestas

En julio de 2000 el gobierno de Bangladesh anunció sus planes de establecer un parque ecológico en el distrito de Moulvibazar, que

780

utilizará más de 1.500 acres de las tierras ancestrales khasi y garo para el turismo. Este plan fue elaborado sin ninguna participación ni consentimiento de las comunidades afectadas. Siete aldeas con más de 1.000 familias khasi y garo enfrentan la expulsión forzosa de sus territorios. Los pueblos indígenas de Bangladesh comenzaron un movimiento democrático contra este Parque Ecológico. Muchos intelectuales, profesores universitarios, escritores, periodistas, políticos, activistas culturales y otros miembros de la sociedad civil los han apoyado y han participado en sus programas. Organizaron manifestaciones de protestas, reuniones públicas, conferencias de prensa, publicaron panfletos y realizaron una huelga de hambre contra el plan del gobierno; y recibieron una excelente cobertura en la prensa y medios de difusión. A pesar de estas protestas, el Ministro de Medio Ambiente y Silvicultura inauguró el Parque Ecológico el 15 de abril de 2001. Ese mismo día miles de indígenas mostraron al Ministro la "bandera negra" como símbolo de su protesta. Era el Domingo de Pascuas, un día religioso clave para los khasi y garo. No obstante, pasaron el día en la manifestación de protesta en el bosque. Otra vez, el 5 de mayo de 2001, los pueblos indígenas organizaron una gran reunión pública en Dhaka para detener el plan para establecer un Parque Ecológico. Asistieron miles de personas. Muchos intelectuales, escritores, poetas, artistas, profesores y periodistas asistieron a la reunión y hablaron a favor de la demanda de las comunidades indígenas.

Notas y referencias

1 No queda claro quién o qué parte fue responsable de este acto, aunque se alega que el UPDF fue responsable.

2 US Department of State. Marzo de 2002. *Country Reports on Human Rights Practices-2001: Bangladesh.*

3 *Daily Star*, 13 de agosto de 2001: *BNP to restore peace in CHT if elected, says Khaleda*, Internet news.

4 *The New Nation*, 12 de diciembre de 2001.

5 **Raja Devasish, Roy. 2002.** "Land and Forest Rights in the Chittagong Hill Tracts, Bangladesh". Documento presentado en ICIMOD, Nepal, en febrero de 2002.

6 Ibid.: 14

7 **Mohd. Rafi y A. Mushtaque R. Chowdhury (eds.) 2001**. *Counting the Hills: Assessing Development in Chittagong Hill Tracts.* Dhaka.

8 International Jumma Community: *An Appeal to the Honourable Representatives of Donor Countries and Funding Agencies Meeting in the Bangladesh Aid Consortium*, 13-15 marzo, 2002, París. Pág. 9.

9 Consejo de la unión, una entidad administrativa del gobierno.

781

NEPAL

Más de 4.000 personas, incluyendo insurgentes, fuerzas de seguridad, policía y civiles han resultado muertos durante la lucha entre las fuerzas de seguridad y la guerrilla maoísta desde que el Partido Comunista de Nepal (maoísta) lanzó su "guerra popular" para establecer un Nuevo Estado Republicano Democrático a mediados de febrero de 1996. Las áreas y pueblos más afectados en conflictos armados son los pueblos indígenas y sus territorios.

Estado de emergencia y empeoramiento de la situación de derechos humanos

Los pueblos indígenas están enfrentando cada vez más amenazas contra su vida y propiedad en sus territorios. Las violaciones de derechos humanos como la violación, la matanza indiscriminada, el secuestro, la tortura y las desapariciones son comunes. Han sido asesinados activistas indígenas, y se estima que 600.000 jóvenes del país han huido del país durante los últimos meses. Estimaciones no oficiales dicen que la pérdida de infraestructura solamente desde noviembre de 2001 totaliza más de 2 mil millones de rupias (aproximadamente 27 millones de dólares). Casi todos los sectores de la vida nacional han sido afectados negativamente.

El Movimiento por la Protección de los Derechos Democráticos, Nepal, con la ayuda de organizaciones de derechos humanos y de la sociedad civil, han mediado en conversaciones de paz entre el gobierno y los maoístas. Los maoístas presentaron tres demandas: un "estado republicano", un "gobierno interino" y la "elección de una asamblea constituyente". Sin embargo, ninguna de sus demandas obtuvo una respuesta positiva del gobierno o de los partidos políticos del parlamento, incluso después de haber abandonado la demanda de un "estado republicano". Las conversaciones de paz fracasaron después de la tercera ronda, en noviembre, después de cuatro meses, y los maoístas se retiraron unilateralmente de las conversaciones y reiniciaron la violencia. Por primera vez en los seis años de insurgencia, tomaron como objetivos instalaciones gubernamentales y barracas del ejército. El gobierno declaró un estado de emergencia y suspendió todos los derechos civiles, políticos y humanos a fines de noviembre, estigmatizando a los terroristas maoístas y movilizando el Ejército Real Nepalés para contener y destruir la rebelión.

Durante los cuatro meses pasados, el Ejército Real Nepalés y las guerrillas maoístas se han enfrentado cara a cara en las montañas

782

nepalesas y en las llanuras del sur. Aunque el ejército ha ejercido presión sobre los insurgentes a través de sus operaciones de "acordonar-buscar-y-destruir", los rebeldes han logrado infligir graves daños a las fuerzas de seguridad.

La pérdida de vidas humanas, propiedad e infraestructura en el transcurso de la "guerra popular" maoísta ha sido enorme. No pasa un solo día sin informes de matanzas brutales, que tienen como víctimas a ciudadanos comunes, incluso a niños. Lo que sorprendió a muchos fue la ferocidad de los ataques rebeldes, a pesar de tres meses de estado de emergencia y las operaciones de seguridad. Como resultado del ataque más violento hasta en el momento, en el lejano distrito occidental de Achham, el 16 de febrero de 2002, donde más de 150 soldados fueron muertos, el parlamento -por más de los dos tercios mayoritarios obligatorios- decidió prolongar el estado de emergencia otros tres meses (hasta junio de 2002) para dar libertad al ejército para combatir la insurgencia.

Los oficiales sostienen que no hay oportunidades inmediatas de retomar las conversaciones con los rebeldes. El gobierno podría considerar conversaciones con los maoístas sólo si renuncian al terrorismo, entregan todas las armas y municiones saqueadas a las fuerzas de seguridad, respetan la Constitución del Reino de Nepal y se unen a la mayoría nacional. Los maoístas declaran que están dispuestos a conversaciones de paz si el gobierno anuncia la elección de una Asamblea Constituyente para redactar una nueva constitución. Recientemente, el gobierno de Nepal ofreció públicamente una recompensa de 5 millones de rupias nepalesas por la captura de los líderes

BEST COPY AVAILABLE

del Partido Comunista de Nepal (maoísta) vivos o muertos, aunque la pena de muerte ha sido ilegal e inconstitucional en Nepal desde 1991.

Aprobación de la ley sobre el establecimiento de una "Fundación Nacional"

En su 20ª Sesión, en el año 2001, el Parlamento de Nepal aprobó una ley sobre el establecimiento de una "Fundación Nacional para el Desarrollo de las Nacionalidades Indígenas". Se suponía que la ley iba a ser aprobada en su sesión de 1999. Esta ley es muy importante porque es la primera ley nepalesa que reconoce 59 grupos étnicos como nacionalidades indígenas. Previamente, la decisión del Gabinete era el único reconocimiento de los pueblos indígenas de Nepal. La ley tiene las siguientes características:

1. Reconoce 59 grupos étnicos de Nepal como nacionalidades indígenas.
2. La Fundación es un organismo autónomo.
3. El principal objetivo de la Fundación es el desarrollo general de las nacionalidades indígenas mediante planes y programas relacionados con el desarrollo económico y tecnológico, social, educativo, cultural (lengua, escritura, historia, artes, literatura, conocimiento) de las nacionalidades indígenas.
4. La Fundación tendrá un Consejo de Gobierno bajo la presidencia del Primer Ministro. Es el organismo supremo elaborador de políticas, y está integrado por los representantes de todas las nacionalidades indígenas como miembros ex officio. El Ministro de Desarrollo Local será co-presidente y contará con seis miembros parlamentarios indígenas de la Cámara de Representantes, tres miembros parlamentarios indígenas de la Asamblea Nacional y un miembro de la Comisión de Planificación Nacional. Los ministros de Finanzas, Cultura, Educación y Turismo serán miembros *ex officio*.
5. La Fundación tendrá un Comité Ejecutivo integrado por el Vicepresidente, dos miembros, un miembro ex officio del Ministerio de Desarrollo Local y un Miembro/Secretario. Es el organismo implementador de las decisiones tomadas por el Consejo Gobernante de la Fundación. El Comité Ejecutivo será formado sobre la base de las recomendaciones de un comité de tres miembros, incluyendo dos representantes de las nacionalidades indígenas. El Ministerio de Desarrollo Local será el ministerio central para la Fundación.
6. Toda nacionalidad indígena tiene el derecho de estar representada en el Consejo Gobernante[1].

784

La Ley de Lengua registrada en el Parlamento

Nepal es un país multilingüe. Hay casi 70 comunidades con 125 lenguas diferentes. La constitución de Nepal reconoce las lenguas habladas por las diferentes comunidades de Nepal como lenguas nacionales. Sin embargo, el 1 de junio de 1999, la Suprema corte emitió un *certiorari* contra la decisión de usar lenguas locales como lenguas oficiales adicionales por la Ciudad Metropolitana de Katmandú, el Comité de Desarrollo del Distrito de Dhanusha y la municipalidad de Rajbiraj. Esta decisión de la Suprema Corte planteó un desafío y cuestionó el estatus del reconocimiento constitucional de las lenguas nacionales. En marzo de 2000, la Primera Conferencia Nacional sobre Derechos Lingüísticos declaró que "ninguna lengua es grande o pequeña, todas son iguales, y todas las comunidades lingüísticas tienen derechos iguales". La conferencia también rechazó aceptar la decisión de la Suprema Corte y exigió enmiendas a la Constitución del Reino de Nepal relacionadas con la discriminación de la lengua (ver *El Mundo Indígena 1999-2000* y *2000-2001*).

En este contexto, las dos organizaciones indígenas, Nepal Tamang Ghedung (NTG) y Newa Rastriya Andolan (NRA) comenzaron a preparar un proyecto de "Ley de la Lengua" con la ayuda de un "Comité Redactor de la ley de la Lengua" integrado por abogados superiores. El 16 de octubre de 2001, la "Ley de la Lengua" fue presentada en la Cámara de Representantes del Parlamento por varios miembros parlamentarios – los Sres. Narayan Man Bijucche del Partido Laborista y Campesino, Lila Mani Pokharel del Frente Unido Popular de Nepal, Par Thapa del Frente Popular Nacional, Buddhi Man Tamang del Partido Rastriya Prajantantra y Bir Bahadur Lama del Partido Comunista de Nepal (Unido Marxista y Leninista). Con el apoyo de IWGIA, NTG y NRA también se organizaron reuniones de consultas con abogados, activistas de la lengua, activistas de los derechos humanos y activistas indígenas para finalizar el proyecto de ley, y realizar una consulta separada con los Miembros del Parlamento sobre la ley presentada a la Cámara de Representantes durante la 21ª sesión del Parlamento. Esta ley ejecutará los derechos fundamentales garantizados por el Artículo 18(1) de la Constitución del Reino de Nepal en conformidad con el espíritu del Artículo 26(2) sobre la directiva estatal sobre principios políticos de la parte 4 de la misma.

Las comunidades lingüísticas organizaron un "Día Negro" en todo el país el 1 de junio de 2001 para mostrar su desagrado con la decisión sobre temas de lengua de la Corte de Justicia, impartida dos años antes. El Día Negro fue organizado por varias comunidades de diferentes lenguas con una manifestación masiva en el ámbito nacio-

nal, carteles y panfletos, procesiones y reuniones públicas. Las comunidades lingüísticas decidieron continuar el Día Negro hasta que el gobierno cambiara las normas y reglamentos del país.

Los pueblos indígenas proponen enmiendas constitucionales

El pueblo nepalés y los partidos políticos están ahora a favor de cambios constitucionales o enmiendas. A este respecto, las organizaciones de pueblos indígenas presentaron una propuesta de enmiendas, cambios y provisiones adicionales a la actual constitución, al Primer Ministro y los partidos políticos parlamentarios. Conforme a la constitución de Nepal, se necesita una mayoría de dos tercios del Parlamento para enmendar la constitución. Las propuestas indígenas son las siguientes:

Recomendaciones para enmiendas de la actual constitución

1. Preámbulo: el preámbulo debería reflejar el hecho de que todos los grupos étnicos, lenguas, artes y culturas deben tener iguales derechos.
2. Artículo 2: la "Nación" deberá ser reemplazada por un "estado multinacional".
3. Artículo 4 (1): el estado debería ser declarado secular.
4. Artículo 6 (1 y 2): todas las lenguas de Nepal deberían ser declaradas "lenguas nacionales".
5. Artículo 46: el nombre de la actual Cámara Alta del Parlamento debería ser cambiado de "Asamblea Nacional" a "Asambleas de las Nacionalidades", en las que todas las naciones (pueblos) que constituyen Nepal deberían estar representados. Esto es para asegurar la plena participación de todas las comunidades, grandes o pequeñas, en los procesos de elaboración de leyes. Este podría ser un fuerte instrumento para fortalecer la unidad nacional de país.
6. Artículo 9 (1 y 5): "Madre" debería ser agregado a "padre" en el artículo 9 (1). En el artículo 9 (5), un extranjero que se casa con una nepalí tiene el derecho a la ciudadanía nepalí.
7. Artículo 9 (4a) : un extranjero puede adquirir la ciudadanía de Nepal si el/ella habla y escribe cualquier lengua nacional de Nepal.
8. Artículo 11 (3): "El estado no discriminará a ciudadanos por causa de su lengua" debería ser agregado en el artículo.
9. Artículo 12 (2): las subcláusulas restrictivas 1, 3 y 4, que establecen "castas, tribus o comunidades" deberían ser omitidas.

786

10. Artículo 18 (2): el Estado debe brindar enseñanza en lengua materna hasta el nivel de educación superior.
11. Artículo 19: todas las religiones practicadas desde hace largo tiempo deben ser reconocidas o no se reconocerá a ninguna.
12. Artículo 26 (10): las leyes deberían ser formuladas dentro del espíritu de los principios guías de la constitución.
13. Artículo 112 y 113: debería haber una previsión para que los grupos étnicos o comunitarios puedan formar partidos políticos. (O la prohibición o imposición de restricciones sobre organizaciones o partidos políticos basados en la religión, comunidad, casta, tribu o región debería ser eliminada de los artículos).
14. Artículo 114: la representación de las mujeres en los partidos políticos para las elecciones a la Cámara de Representantes debería aumentar del 5 por ciento al 15 por ciento de los candidatos totales, 50 por ciento de los cuales deberían ser reservados para mujeres indígenas.

Recomendaciones para previsiones adicionales

15. Garantizar cuotas para las comunidades de nacionalidades/ pueblos indígenas y dalit (casta inferior e intocables) en el ámbito de toma de decisiones en los sectores de gobierno, empleo, educación y salud.
16. 50 por ciento de los escaños deberían ser reservados para mujeres de nacionalidades, de la cuota que ha sido reservada para mujeres en el ámbito de toma de decisiones en los sectores de gobierno, empleo, educación y salud.
17. El estado debería garantizar la participación directa de nacionalidades para la preservación y promoción del conocimiento indígena y el patrimonio intelectual y cultural, y respetar su derecho de propiedad intelectual sobre tal patrimonio.
18. Las prácticas existentes de separar áreas electorales para elecciones a la Cámara de Representantes de acuerdo a la distribución de la población deberían ser abolidas y se deberían fijar nuevas áreas de acuerdo a la composición sociocultural, antecedentes históricos, ubicación geográfica, grupos étnicos, arreglos de concentración residencial y distribución de la población.

Referencia

1 *Nepal Gazette* Part 51 Additional Issue 67, febrero 7, 2002.

787

INDIA

El año 2001 fue caracterizado por dos acontecimientos importantes en el ámbito nacional que pueden tener serias consecuencias en el futuro para los pueblos indígenas de India y sus organizaciones: los intentos de políticos y empresas privadas para anular la histórica sentencia de la Suprema Corte sobre el caso Samata, exigiendo una revisión, o haciendo trabajo de lobby a favor de una enmienda del Quinto Registro (en inglés *5th Schedule* - n. d. e.) de la Constitución; y la promulgación de la polémica Ordenanza para la Prevención del Terrorismo (POTO), que fue finalmente aprobada como la Ley de Prevención contra el Terrorismo (POTA) el 26 de marzo de 2002.

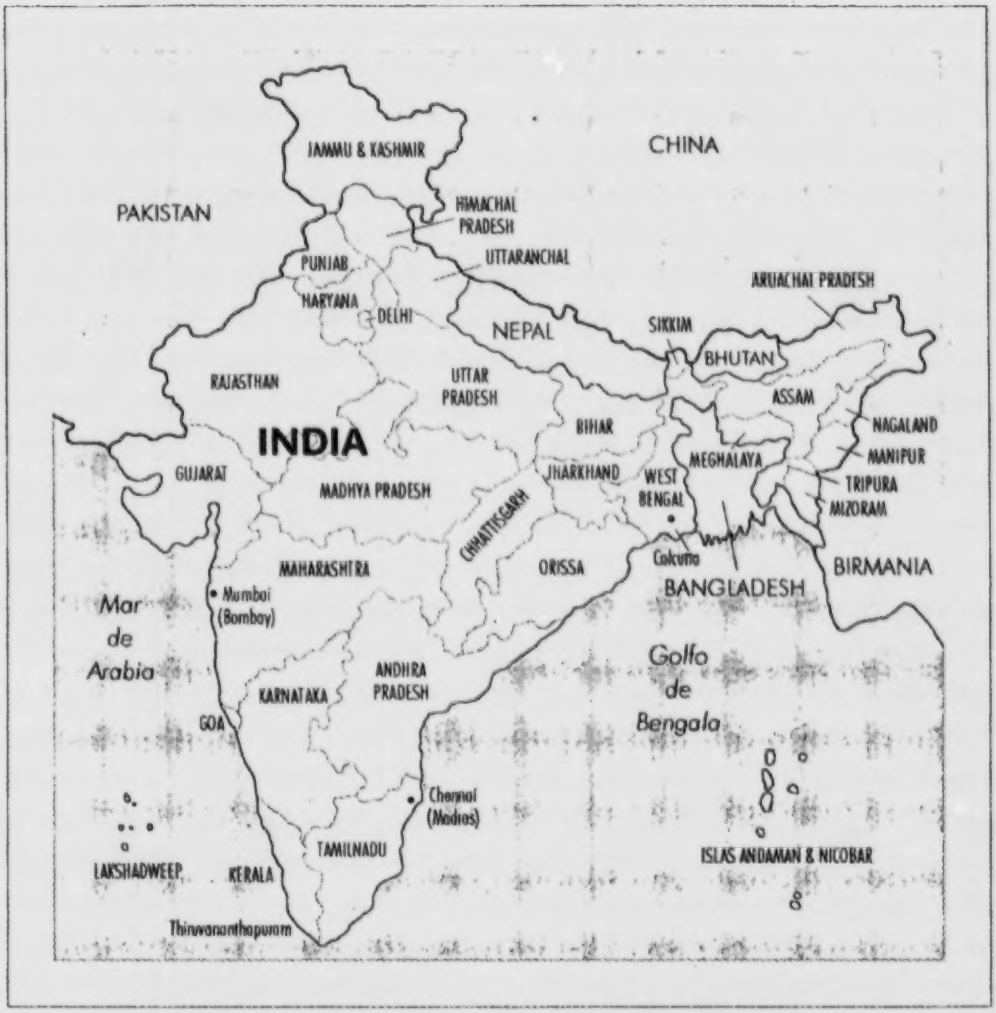
Aunque se informó sobre algunos acontecimientos alentadores en las regiones – como la exitosa lucha de los adivasi[1] en Kerala por la restauración de tierra enajenada (que trataremos en detalle más adelante)- otros no ofrecen mucha razón para entusiasmo. La implementación de la Ley de Extensión Panchayat Raj, que supone garantizar un grado de largo alcance de autonomía para las comunidades indígenas en las áreas del 5º Registro, hasta ahora ha sido decepcionante en el nordeste, una de las áreas más militarizadas del mundo, a pesar de algunos progresos en las conversaciones de paz entre los naga y el gobierno indio.

La consecuencia del caso Samata: intentos de enmendar el Quinto Registro

Samata es una ONG que trabaja con los adivasi de Andhra Pradesh. Samata presentó una demanda judicial contra el gobierno estatal de Andhra Pradesh por arrendar tierras tribales a compañías mineras privadas en las Áreas Registradas (áreas tribales reconocidas oficialmente y registradas bajo el –así llamado- 5º Registro de la Constitución). En julio de 1997, la Suprema Corte de India emitió una sentencia histórica en la que declaró que el gobierno también era una "persona" y que todas las tierras arrendadas a compañías mineras privadas en las áreas registradas eran nulas y sin valor. La sentencia prevé, entre otras cosas:

- La posibilidad de que los "minerales sean explotados por los mismos tribales, ya sea individualmente o a través de sociedades cooperativas con asistencia financiera del Estado".
- Que al menos el 20% de las ganancias netas de las operaciones mineras en áreas tribales "sea separado como fondo permanente

788



para necesidades de desarrollo aparte de la reforestación y mantenimiento de la ecología".

- Que la "transferencia de tierra en un Área Registrada por medio de arrendamiento a no-tribales, conjuntos corporativos, etc., está prohibida".
- Que la "renovación de arrendamiento es un nuevo otorgamiento de arrendamiento y, por lo tanto, cualquier transferencia está prohibida".
- Que una "Conferencia de todos los Ministros en Jefe, el Ministro del Ministerio pertinente y el Primer Ministro y los Ministros Centrales pertinentes, debería tomar una decisión política para realizar un proyecto consecuente en todo el país con respecto a las tierras tribales".

Desde la emisión del fallo de la Suprema Corte, tanto el Gobierno Estatal de Andhra Pradesh como el Gobierno Central han intentado

BEST COPY AVAILABLE

revertirlo. Sin embargo, el 6 de marzo de 2000 la Suprema Corte rechazó una petición conjunta del Estado de Andhra Pradesh y del Gobierno Central para modificar la orden Samata. En julio del mismo año, el Ministro de Minería redactó e hizo circular una Nota Secreta a los Secretarios del comité proponiendo una enmienda del 5º Registro para anular la Sentencia Samata y posibilitar el arrendamiento de tierras a forasteros en áreas tribales. Esto llevó a protestas populares masivas en Andhra Pradesh y una extensa cobertura crítica en los medios de difusión nacionales y regionales. Finalmente, el Ministro de Andhra Pradesh reaccionó emitiendo una declaración en la que indicó el retiro de la propuesta de enmienda y, el 15 de marzo, el Primer Ministro replicó a una pregunta de Arjun Singh, en la Cámara Alta del Parlamento, diciendo que el Gobierno no tenía intención de enmendar el Quinto Registro para anular la Sentencia Samata. Sin embargo, la batalla todavía continúa. En un Documento de Enfoque Preliminar para el Décimo Plan Quinquenal (2002-2007) emitido por la Comisión Nacional de Planeamiento el 1 de mayo del año pasado, se refirió a la Sentencia Samata como un obstáculo para la minería privada de carbón. El párrafo 3.58 del capítulo 3 sobre Temas de Política Sectorial establece:

> *Será también necesario hacer otras enmiendas para superar el obstáculo puesto en el camino de la minería privada en áreas tribales notificadas por la Sentencia Samatha* [sic]. *Los procedimientos de limpieza ambiental también necesitan ser simplificados para que los potenciales inversores privados dispongan de reglas claras y transparentes.*

Diez días más tarde, el Sr. Arun Shourie, Ministro de Inversión, hizo una declaración en el Hindu Business Line, Oficina de Delhi, expresando que querían revisar la Sentencia Samata. Obviamente, muchas fuerzas del gobierno central todavía se niegan a aceptar la Sentencia de la Suprema Corte.

La promulgación de la nueva ley antiterrorista es observada con preocupación

A pesar de las masivas críticas nacionales e internacionales, la polémica Ley para la Prevención del Terrorismo (POTA) fue aprobada el 26 de marzo de este año. Redactada poco después del incidente del 11 de septiembre en Nueva York, la ley fue debatida acaloradamente en público durante meses. Los grupos y activistas de derechos humanos de India han señalado las severas consecuencias que tiene esta

ley para los activistas políticos, indígenas, religiosos o de derechos humanos. Como ya lo había advertido la organización internacional de derechos humanos, Human Rights Watch, en octubre del año pasado, la nueva legislación antiterrorista dará a la policía de la India amplios poderes de arresto y detención[2] .

La POTA es una versión modificada de la Ley de (Prevención) de Actividades Terroristas y Perturbadoras (TADA), revocada en 1995 debido a las protestas públicas y conocida por haber posibilitado decenas de miles de detenciones por motivos políticos, tortura y otras violaciones de los derechos humanos contra los opositores políticos, activistas indígenas y de las minorías a fines de los años 80 y comienzos de los 90. Se dice que la nueva ley antiterrorista tiene un alcance aún mayor y da una definición mucho más amplia de lo que se considera un "acto terrorista". Permite hasta 180 días de detención preventiva sin cargos, y "subvierte el principio cardinal del sistema de justicia criminal –la presunción de la inocencia- poniendo la carga de la prueba en el acusado, ocultando la identidad de los testigos, haciendo que las confesiones hechas a funcionarios policiales sean admisibles como prueba, y otorgando al fiscal público el poder de negar la fianza"[3]. Los opositores a la nueva ley comparten el temor de que "es más probable que POTA se utilice para la detención preventiva de opositores pacíficos que para enfrentar el terrorismo"[4] y tienen la misma opinión que la Comisión Nacional de Derechos Humanos de India, que está convencida que las leyes ya existentes son suficientes para luchar contra la amenaza del terrorismo.

Jharkand: Peticiones contra la Ley de Extensión Panchayat Raj

En 1996, la 73ª Ley de Enmienda Constitucional, que está dirigida primariamente a promover la democracia en el ámbito aldeano a través de las instituciones Panchayat Raj, fue extendida a las Áreas del Quinto Registro mediante la Ley de Provisión de los Panchayat (Extensión de las Áreas Registradas). La extensión de esta Ley ha sido realizada mediante cambios apropiados para transformar un sistema establecido para las áreas generales del país en uno apropiado para los sistemas específicos socioeconómicos y político-administrativos de los adivasi en las Áreas Registradas. Debía asegurar el autogobierno mediante una estructura tripartita. El primer nivel es el *Gram Sabha*, una institución de autogobierno a nivel aldeano. Todos los miembros adultos de la aldea son automáticamente miembros del Gram Sabha. En las áreas no reconocidas oficialmente como áreas tribales (o las Areas Registradas), el nivel más bajo de los sistemas de

autogobierno local es el *Gram Panchyat*. Esto difiere de las áreas tribales, en las que está constituido por miembros aldeanos electos. Los otros dos niveles son iguales para las áreas tribales y no-tribales. El segundo nivel es llamado el *Panchyat Samiti*, que está constituido en el área demarcada como Bloques de Desarrollo y está integrado por miembros electos por sus organismos más bajos, es decir, los Gram Sabhas o los Gram Panchyat, respectivamente. El *Zila Parishad* (Consejo de Distrito) es el organismo más elevado a nivel de distrito, y está constituido por miembros electos por los organismos más bajos. Mediante la Ley de Extensión para áreas tribales, el Gram Sabha ha sido investido del control sobre tierras, derechos sobre productos forestales y minerales menores, control de los mercados, préstamo de dinero, venta y consumo de productos tóxicos, etc. También se encarga de los fondos del gobierno central que son enviados vía el Zila Parishad directamente al Gram Sabha.

Se requirió a los estados que tienen áreas que caen dentro del 5º Registro que hicieran las enmiendas apropiadas de sus leyes acordes con las previsiones de la ley central. Nueve estados caen dentro del Quinto Registro y, por lo tanto, recibieron instrucciones de enmendar sus leyes en conformidad: Andhra Pradesh, Jharkand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa, Chattisgarh y Rajasthan. Sin embargo, sólo cinco de ellos - Andhra Pradesh, Himachal Maharashtra, Madhya Pradesh, Orissa y Jharkand han realizado hasta ahora las enmiendas necesarias. No obstante, los adivasi y sus partidarios no están para nada satisfechos con la forma en que lo hicieron. El caso de Jharkand, donde la ley fue promulgada recién el año pasado, ilustra cómo, en el proceso, el espíritu de la Ley Central fue corrompido en el proceso, de tal manera que se convirtió en una herramienta en manos del gobierno estatal para fortalecer su control sobre las comunidades adivasi en vez de suministrarles más poder a través de la autonomía local.

Ni la 73ª Enmienda original de los Panchayat Raj ni la Ley de Extensión de los Panchayat de 1996 han entregado el derecho básico del control pleno sobre los recursos de la tierra, del bosque, minerales y del agua a las comunidades. Tampoco los Panchayat disponen del control sobre el funcionamiento de la policía, la administración y el poder judicial. El gobierno de Jharkand fue incluso un paso más lejos en el debilitamiento del autogobierno local, restringiendo lo poco que había en la Ley Central. El objetivo de la Ley Panchayat de Jharkand 2001 parece ser la formación de instituciones impotentes a nivel aldeano en nombre de los "Panchayat" para asegurar la cooperación con el gobierno en la implementación de sus proyectos y programas.

No hay ninguna previsión sobre la obligación de buscar el consentimiento, ni siquiera la consulta, con el Gram Sabha o el Gram Pan-

792

chayat en casos donde el estado o el gobierno central requieren tierras en las Áreas Registradas. En forma similar, aunque la Ley Central de 1996 otorga el poder al Gram Sabha y el Gram Panchayat para impedir la enajenación de tierras en las Áreas Registradas y tomar las medidas apropiadas para restaurar cualquier tierra ilegalmente enajenada de una Tribu Registrada, la ley del Estado de Jharkand permanece silenciosa sobre esto. Se sospecha que es para salvaguardar los intereses adquiridos de los empresarios industriales y la agroindustria.

La política del gobierno para proteger los intereses creados de los contratistas forestales también es bastante notoria en el caso de los derechos de propiedad sobre productos forestales menores. La Ley de Jharkand no traspasa la responsabilidad sobre la protección y manejo de los bosques al Gram Sabha, como era la esperanza de los adivasi, sino que lo priva incluso del derecho de propiedad de los productos forestales menores en contradicción con las previsiones de la Ley Central. La Ley de Jharkand tampoco otorga al Gram Sabah el poder de aplicar la prohibición o restringir la venta y consumo de cualquier elemento tóxico, o el poder de ejercer control sobre el préstamo de dinero.

El paso más infame que dio la Ley de Jharkand para contrariar la promesa de otorgar autonomía a los pueblos tribales del área está en el ámbito de funcionamiento de las instituciones centrales de la autonomía tribal, el Gram Sabha, Panchyat Samiti y Zila Parishad. En primer lugar, la Ley de Panchyat Raj de Jharkand mezcla las dos instituciones del Gran Sabha y del Gran Panchyat en las Areas Registradas. Menoscabando la importancia del primero, constituye al último (una institución que debería existir sólo en Areas no-Registradas) mediante elecciones en las que llos escaños están reservados no sólo para las Tribus Registradas sino también para las Castas Registradas y Otras Castas Atrasadas, sobre la base del tamaño de la población de la aldea. Además, para limitar las estructuras de esas instituciones, la Ley de Jharkand da al estado el derecho a nombrar personas distinguidas a todos los niveles de la estructura tripartita sin mencionar los criterios para seleccionar a esas personas. Se ha hecho una previsión para posibilitar que el Miembro del Parlamento local, el Miembro de la Asamblea Legislativa y el Miembro de Rajya Sabha (Cámara Alta del Parlamento) sean miembros ex officio de estos organismos, electos supuestamente en forma democrática. Es más, en su ausencia pueden nombrar personas para que los representen en estos organismos. Esto no sólo es antidemocrático sino que también viola la Constitución de India.

Consecuentemente, se presentaron cuatro peticiones, que fueron admitidas, a la Alta Corte de Jharkand, cuestionando la validez de la

339

celebración de elecciones Panchyat en las Áreas Registradas. En febrero de 2002, el Sr. Devendra Nath Champia presentó una petición en nombre de la Organización para los Derechos Humanos de Jharkand (*Chaibasa*) y *Munda Manki Samiti* de Kolhan, cuestionando la validez y constitucionalidad de la Ley Panchayati Raj del Estado de Jharkand. Esta petición también fue admitida por la Alta Corte de Jharkand. Sin embargo, el gobierno no estaba dispuesto a argumentar el caso y no presentó siquiera una traducción en inglés de la Ley en la corte. La Alta Corte le dio tres semanas, que finalizan en junio de 2002, para prepararse para la próxima audiencia. Mientras tanto, algunos miembros prominentes de la comunidad Uraon (Kurux) van a intervenir en el caso en nombre de la comunidad[5].

La nueva política industrial del gobierno de Jharkand prevé la invasión de tierras adivasi

La nueva política industrial presentada por el gobierno de Jharkand en 2001 reveló la intención de crear zonas económicas. Una de esas zonas sería a lo largo de la autopista nacional 33, de 125 kilómetros de largo, entre Ranchi y Jamshepdur. Se propone que 5 kilómetros a ambos lados de la autopista sean dedicados a propósitos industriales. Eso sumaría un área de 1.250 kilómetros cuadrados dedicados a la industrialización. No se toma ninguna consideración sobre si es tierra de cultivo o bosques. Además, no se ha realizado ninguna consulta con las numerosas familias adivasi que ocupan gran parte de la tierra a ambos lados del camino. El consentimiento de los pueblos indígenas no es obviamente un criterio. El 20 de octubre, el Director de Industrias, Sr. A. K. Singh, hizo una declaración de alcance aún mayor. Hablando a los miembros de la Cámara de Comercio e Industria de Bokaro, dijo que el gobierno de Jharkand había decidido reservar ocho kilómetros de tierra a ambos lados de las autopistas nacionales y estatales para objetivos industriales. Esto tiene vastas consecuencias debido a la considerable longitud de las autopistas estatales y nacionales del estado. Parece que el departamento forestal se mantiene callado o no ha sido consultado. Como de costumbre, cientos de miles de familias que serán afectadas no han sido consultadas. El Ministro de Bienestar Social, Sr. Arjun Munda, reveló el 26 de diciembre que el gobierno de Jharkand está considerando una legislación para hacer que los propietarios de la tierra donde se establezca cualquier industria sean socios capitalistas de la compañía. Actualmente, la práctica es que los propietarios reciben compensación financiera y, en algunos casos, trabajos, después de lo cual tienen poco que hacer. Dijo que si los dueños de tierras eran conver-

794

tidos en socios capitalistas entonces tendrían derecho a recibir parte de los beneficios y recuperarían la tierra cuando la compañía se retire.

Madhya Pradesh: ¿matanzas en un intento de debilitar al movimiento adivasi?

Una misión investigadora realizada para investigar la muerte de tres adivasi y una persona no-adivasi el 2 de abril de 2001, en el distrito de Dewas, Madhya Pradesh (ver *El Mundo Indígena 2000-2001*), llegó a la conclusión de que el acto fue parte de un esfuerzo sistemático para debilitar a las organizaciones locales adivasi, *Adivasi Morcha Sangathan* y *Adivasi Shakti Sangathan*. El equipo investigador, que entró al área poco después del evento, concluyó que desde el 28 de marzo la policía y la administración de Dewas habían desatado un reino de terror, causando la huida de miles de adivasi de sus aldeas hacia los bosques, mientras que la administración policial registraba sus aldeas, destruyó casas y arrestó a algunas personas.

Durante la misión, algunas personas afectadas dijeron al equipo que la verdadera razón del reino del terror era la intención de destruir las organizaciones tribales (*sanghatan*) calificándolas de nasalitas[6]. En 1996, los tribales de esta región habían organizado las organizaciones locales *Adivasi Morcha Sangathan* y *Adivasi Shakti Sangathan* para resistir a la explotación del departamento forestal, la corrupta maquinaria del gobierno y los prestamistas usureros. Estas organizaciones atrajeron a cientos de adivasi y estaban ganando tanta influencia política que, en las elecciones locales celebradas recientemente, los miembros de Sangathan tuvieron mucho éxito. Esto creó mucha tensión política y los partidos tradicionales estaban insatisfechos con los Sangathan. Tanto el Recaudador del Distrito como el Superintendente de Policía, quienes eran nuevos en el área, habían anunciado públicamente el 13 de febrero que iban a destruir totalmente a los Sangathan y no iban a dejar trazas de ellos.

Además, el Departamento Forestal ha hecho tradicional e ilegalmente enormes ganancias, mediante la imposición de tasas sobre la construcción de viviendas, recolección de madera, pastoreo de animales, etc. Durante los pasados tres años, los Sangathan habían protestado contra estas prácticas ilegales y dijeron a los tribales que no pagaran esos sobornos. Los funcionarios del Departamento Forestal y los otros funcionarios del distrito estaban furiosos porque se vieron privados de una lucrativa fuente de ingresos. En respuesta, el gobierno formó una organización llamada Van Raksha Samiti como alternativa del Sangathan y forzó a las personas tribales a integrarse, pero sin mayor éxito. Curiosamente, todas las casas que fueron destrui-

das por las fuerzas de seguridad pertenecían a líderes del Sangathan mientras que ningún miembro del Van Raksha Samiti fue afectado[7].

Kerala: la lucha de los adivasi entra en una fase crítica

La muerte de 38 hombres, mujeres y niños adivasi en los distritos de Wayanad, Aplacad y Kannur, en julio-agosto de 2001, precipitaron una lucha intensa. Esta vez, la lucha estaba liderada por el *Adivasi-Dalit Samara Samiti*, una plataforma informal. También es muy importante que los activistas dalit[8] se unieron a los activistas adivasi, liderados por su popular líder, Sra. C.K. Janu.

El estado de Kerala, con un Índice de Calidad de Vida Física (PQLI) que es sólo comparable con el de Taiwán, Corea del Sur y Japón en la región asiática, el año pasado se vio frente a una situación en la que miles de adivasi estaban padeciendo hambre, hambruna y enfrentando muerte inminente. El gobierno culpó a una misteriosa enfermedad, el alcohol y las aguas contaminadas. Las muertes por hambre no eran nada nuevo. Pero el número de muertes durante el período indica lo terrible del desastre. El 14 de agosto, un vehículo de suministros del gobierno civil que llevaba granos fue asaltado en Noolpuzha Panchayat, en el Distrito de Wayanad, y los granos fueron distribuidos entre los hambrientos. Cuatro mujeres adivasi, incluyendo dos niñas menores de edad, fueron arrestadas. *Adivasi-Dalit Samara Samiti* decidió lanzar una lucha, describiendo la situación emergente como una situación que ha convertido a los adivasi en refugiados en su propio territorio. La tierra, la fuente fundamental de supervivencia, les ha sido sistemáticamente negada a pesar de la existencia de legislación específica como la Ley de Kerala (Restricción sobre la Transferencia de Tierras y Restauración de Tierras Enajenadas) de 1975, que no fue implementada a pesar de una orden de la Alta Corte de 1993 (ver *Mundo Indígena 1995-96* y años siguientes). En 1999 hubo un esfuerzo para revocar y reemplazar la Ley de 1975 que fue rechazado en 2000 por la Alta Corte como inconstitucional en 2000. La ley también habla de proveer hasta un acre de tierras para cada una de las 11.000 familias sin tierra. El caso está actualmente en la Suprema Corte (ver *El Mundo Indígena 2000-2001*). Todo esto se hace fundamentalmente para evitar la restauración de tierras enajenadas y suministrar algunas tierras alternativas, en violación de las previsiones del Artículo 244 (1).

Campamentos de protesta y negociaciones

El 30 de agosto, se instalaron campamentos de refugiados adivasi frente a la residencia del Ministro A.K. Antony y del Secretariado en

796

Thiruvananthapuram, la capital del estado. Cientos de adivasi, en su mayor parte mujeres y niños de diferentes partes del país, acudieron en masa, armaron sus chozas y comenzaron a residir allí declarando que no se irían sin una solución final al tema fundamental de su supervivencia. El estado ignoró la lucha, presumiendo inicialmente que no duraría mucho. Sin embargo, la lucha cobró impulso y apoyo del público en general, y varios sectores acudieron en su apoyo, convirtiéndola en una lucha por la democracia misma. Los dalit, principalmente los habitantes de los barrios bajos y los pobres, comenzaron a participar activamente en la lucha. El gabinete discutió el tema y declaró su intención de hablar con el *Adivasi-Dalit Samara Samiti* el 6 de septiembre. El 5 de septiembre las celebraciones y demostraciones de gala patrocinadas por el estado para celebrar a *Onam*, un importante festival que ahora es un enorme evento turístico, fueron consideradas como impropias y vulgares cuando había cientos de personas muriendo de hambre en el estado. El *Samara Samiti* declaró que se opondría al festival, lo que llevó a escaramuzas e intentos de arrestar a C. K. Janu. Esto tocó una veta popular en el público. El día siguiente, habiendo reconocido que existía una crisis, el Primer Ministro mantuvo conversaciones y presentó una propuesta que fue, no obstante, rechazada por el *Samara Samithy*. Por lo tanto, las conversaciones fracasaron y el Samara Samithy declaró que intensificaría la lucha.

Después de una reunión con los Recaudadores del Distrito, el 11 de septiembre, el Primer Ministro anunció que se identificarían 15.000 acres de varias categorías de tierra, a saber, de la Plantation Corporation, de los proyectos de desarrollo tribal, de *poramboke* (tierras del gobierno) etc., en el término de un mes y que dentro de los siguientes dos meses se distribuirían a los carenciados. El *Samara Samithy* rechazó también esta oferta. La lucha comenzó a extenderse por todo el estado. Se realizó una "Jornada para la Afirmación de los Derechos" en todo el estado del 12 al 17 de septiembre con recepciones públicas, reuniones y manifestaciones en toda la ruta. Otros sectores agregaron apoyo y presión en forma de manifestaciones y otras acciones de los grupos de derechos humanos, dalit, organizaciones de mujeres, organizaciones de trabajadores de la pesca, grupos ecológicos, intelectuales, escritores, académicos, estudiantes, administradores, medios de difusión, etc. La cantidad de adivasi en los campamentos aumentó a más de 500 y se levantaron más chozas.

Intento infructuoso de quebrar la lucha

El gobierno decidió entonces quebrar la lucha mediante la adopción de una estrategia a varias puntas de amenazas, incentivos, subver-

797

sión interna y división de los adivasi con la ayuda de los partidos políticos mayoritarios y la maquinaria estatal. Estas medidas fueron contrarrestadas efectivamente y, en cambio, sólo sirvieron para consolidar la unidad de los adivasi. El *Samara Samithy* llamó a la primera reunión del *Adivasi Gothra Mahasabha* (Gran Consejo de los Adivasi), el 3 de octubre – dando el primer paso tentativo hacia una asamblea popular. El *Mahasabha* aprobó las acciones del *Samara Samithy* y llamó a una intensificación y extensión de la lucha a todas las áreas adivasi. También se realizó una manifestación de 10.000 personas en la ciudad. Los intentos de algunas de las organizaciones de la sociedad civil de presentar demandas judiciales para desmantelar los campamentos también fracasaron. El plan de desarticular por la fuerza los campos de refugiados también fracasó, porque el público general de la ciudad y los medios comenzaron una vigilia, además de formar una cadena de protección en torno a los campos de refugiados. La condena de un gobierno que pisoteaba el derecho democrático a la reunión pacífica y a la protesta democrática fue directa. El Ministro anunció que identificaría 42.000 acres de tierra que serían distribuidos a aquellos que poseyeran menos de un acre. Los adivasi también rechazaron esta oferta. Los campos de refugiados se extendieron a otros distritos como Pathanamthitta, Idukki, Palakkad y Kannur. Se desplegó una fuerza policial masiva y comenzaron los arrestos. La agitación se extendió en todo el cinturón adivasi, creando la movilización para un levantamiento general, la primera experiencia de ese tipo en el estado. C. K. Janu anunció una huelga de hambre hasta la muerte desde el 17 de octubre, después de que la asamblea del *Adivasi Gothra Mahasabha* aprobó más planes para la lucha.

El acuerdo final

Enfrentado con una crisis, el gobierno decidió conceder todas las demandas del *Samara Samithy* el 16 de octubre. A cambio, el *Samithy* ofreció desmantelar los campamentos de refugiados aunque continuó el proceso de lucha. El acuerdo alcanzado en la última ronda de discusiones celebradas el 16 de octubre entre un subcomité constituido especialmente por el gobierno para resolver la revuelta, encabezado por el Ministro A. K. Antony, algunos de sus colegas y la alta burocracia y el *Adivasi-Dalit Samara Samithy* representado por C. K. Janu, Geethanandan, Sunny, Prasad, M. K. Narayanan y C. R. Bijoy, incluye las siguientes disposiciones:

1. 5 acres de tierra para todas las familias con menos de 1 acre. Para empezar, se distribuirían 42.000 acres de parcelas de tierra entre 1 y 5 acres mientras que el resto se distribuiría cuando se ubi-

caran las tierras y estuvieran disponibles. Este trabajo comenzaría a partir del 1 de enero hasta el 31 de diciembre de 2002, entregando 5 acres cuando fuera posible en la medida en que se encontraran tierras apropiadas.

2. Se trazaría un plan maestro antes de diciembre de 2001, para ser incluido en el décimo plan quinquenal que comienza en 2002 y estaría centrado en apoyar a los beneficiarios antes mencionados por un máximo de 5 años hasta que alcancen la autosuficiencia.
3. Una decisión del gabinete incluiría áreas adivasi en el Quinto Registro y se realizaría una propuesta que sería enviada al gobierno central para la notificación del Presidente. Mientras tanto, se elaboraría una legislación apropiada para proteger la tierra adjudicada bajo este acuerdo.
4. El gobierno de Kerala cumpliría la sentencia de la Suprema Corte con relación al caso pendiente. En este caso, el gobierno de Kerala había objetado la sentencia de la Alta Corte, que rechazó la anterior anulación del gobierno de Kerala de la Ley de Tribus Registradas de Kerala de 1975 y declaró desacato a la corte por no haber respetado el fallo de la Alta Corte de 1993 de implementar la Ley de 1975.
5. Participación del Samara Samithy en todas las tomas de decisión y procesos de implementación sobre todos los asuntos relacionados con este acuerdo.
6. Se constituiría una Misión Tribal para realizar lo antes mencionado, encabezada por un alto funcionario del Servicio Administrativo de India.

La tercera reunión del *Adivasi Gothra Mahasabha* fue celebrada en la aldea adivasi de Pazhayarikandam en el Distrito Idukki, del 17 al 18 de noviembre. La estructura básica de Mahasabha como un sistema no-centralizado basado en los principios fundamentales del sistema político-administrativo adivasi fue elaborada y afirmada como el sistema de gobierno con los pueblos, no sólo para cumplir con el acuerdo alcanzado con el gobierno sino también para gobernar al pueblo. Este sistema extra-parlamentario fue considerado esencial en un contexto en que los partidos políticos mayoritarios y el estado no están dispuestos, o no son capaces, de cumplir ni siquiera con las obligaciones constitucionales básicas. Para comenzar, se resolvió realizar a nivel estatal la tarea de la identificación de los beneficiarios y tierras aprobadas en la unidad fundamental, la aldea.

El gobierno distribuyó simbólicamente más de 1.000 acres de tierra a unas 383 familias adivasi en el Distrito Idukki, comenzando así la

799

distribución de tierras. El proceso de identificación de los beneficiarios y tierras se ha enfrentado a una rígida oposición de los partidos políticos mayoritarios, la burocracia y particularmente el departamento forestal. El *Samara Samithy* y *Gothra Mahasabha,* comprendiendo que la lucha será prolongada, están lanzando un proceso a nivel estatal de conscientazacion política y reforma, centrado en todos los sectores marginados. Su posición es que es el pueblo que debería no sólo implementar el acuerdo sino también poner en marcha una agenda política y un movimiento para el cambio.

Tamilnadu: Continúa la lucha contra el Parque Zoológico Coimbatore

En 2001, se hizo un nuevo intento para cercar el emplazamiento propuesto del Parque Zoológico Coimbatore (CZP) en tierra adivasi en las sierras de Naikatti, en Coimbatore, por una ONG que tiene el mismo nombre. CZP tiene la esperanza de apropiarse del territorio ancestral de los irula, que están clasificados por el gobierno como "tribus primitivas", afectando la vida y los medios de subsistencia de más de 1.000 irula, generando conflicto entre los adivasi y el gobierno así como con los pequeños comerciantes locales no-adivasi y los contratistas.

CZP es una sociedad registrada establecida por importantes industriales y empresarios de la ciudad de Coimbatore en 1986, encabezada por G. Rangaswamy (Director Ejecutivo, Chandra Textiles) y que propone establecer el "Parque Zoológico y Centro de Conservación Coimbatore" por valor –según informes- de 2,5 millones de rupias (US$ 53 millones) en la aldea de Thuvaipathy a unos 30 kilómetros de la ciudad de Coimbatore.

En 1999, el CZP comenzó su operación de apoderarse de tierras usando tácticas de mano dura y empleando a bandas para aterrorizar al pueblo. Una serie de casas fueron demolidas ilegalmente. Los irula comenzaron a realizar protestas organizadas en 1994. El actual conflicto surgió con el otorgamiento de un arrendamiento sobre 180,78 acres de tierra en 1998 y la entrega real en 2001. El 30 de marzo, los adivasi fueron atacados. Seis adivasi y tres secuaces de CZP resultaron heridos. Veinte personas, incluyendo a seis mujeres, fueron arrestadas el día siguiente cuando trataban de ingresar a los heridos al hospital.

Se trajeron fuerzas policiales en forma masiva y, bajo su protección, comenzó el cercado el 9 de abril. Se formó un Comité de Acción Conjunta Anti-CZP integrado por 14 organizaciones, incluyendo organizaciones adivasi, grupos ambientalistas, sindicatos, etc., que comenzaron una huelga de hambre. El Foro Coordinador Pan-Indio de

800

los Pueblos Adivasi/Indígenas (AICFAIP) realizó una misión investigadora del 30 de abril al 1 de mayo. Se organizaron protestas en diversas partes del estado, que por primera vez vio el tema de la tierra ocupar un primer lugar. Se hizo un llamado a boicotear las elecciones para la asamblea. Los adivasi arrestados fueron liberados después de un mes de prisión pero las amenazas de CZP continúan. Mientras tanto, se formó un frente unido de activistas adivasi, incluyendo al *Adivasi-Dalit Samara Samithy* de Kerala bajo la dirección de C. K. Janu, para intensificar la lucha. En la última semana de mayo, había comenzado otra vez la demolición del cerco que ahora se extendía sobre una vasta área. Los irula volvieron a entrar a las tierras y comenzaron a cultivar. El 12 de junio, otros 16 adivasi, incluyendo seis mujeres, fueron arrestados por esto. Después del cambio de gobierno y cambios en la burocracia, los funcionarios prometieron acción. Se pidió a CZP cesar todas las provocaciones, porque la tierra en sí misma era tierra en disputa. Con las lluvias, la gente comenzó lentamente a retornar a sus tierras y a comenzar los cultivos. Actualmente, rige el status quo una vez más. La misma lucha puso en claro la falta de toda legislación protectora para los adivasi en Tamilnadu. Entretanto, la Autoridad Central de Zoológicos del Ministerio de Medio Ambiente y Bosques confirmó en noviembre que CZP no había obtenido permiso para establecer un parque zoológico en dichas tierras.

La región nordeste

La región de 250.000 kilómetros cuadrados al nordeste de la Unión India, que está indirectamente vinculada al resto del país por un corredor de menos de 22 kilómetros de ancho, es un área de extrema diversidad cultural. Más de 300 comunidades de la región están reconocidas oficialmente como "Tribus Registradas" en el registro indio de los pueblos. Están diseminadas por los siete estados de la región, es decir, Arunachal Pradesh, Assam, Manipur, Mizoram, Nagaland y Tripura. Cada tribu tiene su constelación de subtribus o clanes que hablan dialectos diversos, que pueden llegar hasta cientos. Hay tribus emergentes del seno de otras tribus en el proceso de descubrirse a sí mismas como entidades independientes en diversas partes de la región, causando alteraciones en la situación política del nordeste. Una característica importante de la región es la existencia de grupos étnicos que se dispersaron a través del estado y fronteras internacionales con Bangladesh, Birmania o China. La región alberga también a una gran población de personas no-tribales que han migrado aquí desde otras partes de India y a través de la porosa frontera internacional con Bangladesh, lo que ha llevado a movimientos xe-

801

nófobos que hacen erupción de vez en cuando. El entrelazamiento de relaciones inter e intragrupales, junto con el gobierno y otras estructuras a nivel estatal, central y global definen los parámetros de la situación de la región.

Militarización, políticas territoriales y ejércitos étnicos

La región nordeste es una de las regiones más militarizadas del mundo. Allí están el ejército indio y fuerzas paramilitares, junto con las diversas organizaciones policiales del estado. Su tarea es defender la integridad territorial de la nación india contra fuerzas externas, y una vez más, esas fuerzas son consideradas como insurgentes. Cualquier evaluación de la situación regional tiene que tomar en consideración los intereses de seguridad de India, particularmente con el trasfondo de los sucesos pasados como la invasión china de India en 1962, y el acechante temor de que esto pueda suceder otra vez dado que China no ha retirado sus reivindicaciones sobre grandes partes del estado indio de Arunachal Pradesh. En abril de 2001, la súbita "invasión" del pueblo Pyrdiwah en Meghalaya, precisamente en la frontera con Bangladesh, por los Fusileros de Bangladesh, dejó en claro la vulnerabilidad de las microcomunidades frente a los sucesos macropolíticos entre los estados nacionales.

La creciente militarización de las sociedades y comunidades del nordeste son de interés en el actual contexto internacional, porque la lucha por los "territorios" ha dado origen a un gran número de alas armadas bien organizadas de organizaciones étnicas creadas para impulsar la "causa de la tribu". Las causas abarcan desde la creación de países independientes, como la de las dos facciones del Consejo Socialista Nacional de Nagalim (NSCM), el Frente de Liberación de Asom (ULFA) de Assam, el Frente Democrático Nacional de Bodoland (NDFB), el Ejército de Liberación Popular (PLA) y el Frente Unido para la Liberación Nacional (UNLF) en Manipur, etc., demandas por un estado (p. ej., los Tigres para la Liberación de Bodoland), hasta un consejo de distrito (el Frente Nacional de Liberación Bru), o la lucha contra la marginación demográfica en Tripura, como la del Frente de Liberación Nacional de Tripura (NLFT) o la Fuerza Tribal de Tripura, etc.

Se cree que muchos de estos "ejércitos" étnicos han surgido debido a un tipo de efecto dominó, como respuesta de autodefensa en una atmósfera de creciente política militante intertribal. Ese efecto dominó ha resultado en el surgimiento como hongos de organizaciones armadas en toda la región. Los periódicos locales informan diariamente sobre enfrentamientos entre estos diversos grupos y las fuerzas de seguridad del gobierno o entre las mismas organizaciones armadas.

802

Hay más de tres docenas de esos grupos armados que cuidan celosamente su propio territorio, los más fuertes y mejor organizados imponen impuestos dentro de su área de influencia para afianzar su autoridad. La imposición de impuestos es una de las más frecuentes causas de problemas intertribales. Por ejemplo, en 2001, la imposición de impuestos a la vivienda a las familias khasi y jainti[9], en las áreas fronterizas de Assam, por el movimiento Solidaridad de los Pueblos Unidos Democráticos (UPDS) y los Voluntarios Nacionales Karbi, y el Consejo Nacional de Voluntarios Achik en las áreas montañosas del oeste de Khasi, causaron tal reacción que un grupo de presión local, la Federación de Pueblos Khasi, Jaintia y Garo (FKJGP) hicieron un llamado para la creación de una fuerza voluntaria para luchar contra estas fuerzas. Otro ejemplo de ese impuesto causante de conflictos surgió durante marzo de 2002 entre los nyshi y los bodo en aldeas de la frontera Assam-Arunachal Pradesh.

De acuerdo al Informe anual del Ministerio del Interior de la Unión India, hubo un total de 1.338 incidentes durante el año 2001 en el nordeste, en los que 574 activistas de diversas organizaciones armadas, 176 integrantes del personal de seguridad de India y 600 civiles perdieron sus vidas. La cantidad de heridos y lisiados, y las pérdidas para las familias, son incontables. Las batallas entre grupos armados, disputas de facciones dentro de los grupos armados de la misma comunidad, asesinatos y matanzas inexplicadas y secretas dejaron a la región envuelta en una espiral de derramamiento de sangre y violencia. Conforme a los organismos internacionales que estudian el desplazamiento, hay entre 170.000 y 250.000 personas desplazadas en la región, huyendo de diversos procesos de limpieza étnica, temores de represalias comunales, persecución y hostigamiento por el ejército y grupos armados, etc.

Conflictos interétnicos

El año 2001 fue una línea divisoria en la historia turbulenta del nordeste de India post 1947. La región se enfrentó a la espantosa posibilidad del surgimiento de múltiples enfrentamientos a gran escala sobre reivindicaciones territoriales por parte de las diversas comunidades.

El más importante fue el enfrentamiento entre los naga y los meitei en Manipur sobre el tema de la extensión territorial del cese el fuego entre el gobierno de India y el Consejo Socialista Nacional de Nagalim (facción Isak-Muivah; NSCN-IM). El acuerdo alcanzado entre el gobierno de India y el NSCN-IM en junio de 2001 extendió el cese el fuego a todos los otros estados donde viven los naga. Coincidió con la publicación de un mapa que describía el área geográfica de las

803

reivindicaciones del NSCN-IM para Nagalim, que comprendía todos los territorios que pensaban "pertenecían" a los naga. Esto causó furor en los estados vecinos, que temían que esto pudiera eventualmente amenazar su integridad territorial. El gobierno de India tuvo que retirar la extensión territorial del cese el fuego, haciéndolo sólo aplicable dentro del estado de Nagaland (ver también capítulo sobre Nagalim en este volumen). Durante las tensas semanas antes de la retirada, sólo la sagacidad de los líderes comunitarios evitó enfrentamientos sangrientos. Pero el tema sigue sin ser resuelto, porque las hostilidades sólo están suspendidas momentáneamente.

En Assam, la decisión del gobierno de India y del gobierno de Assam de crear un Consejo Territorial de Bodoland (BTC) para los bodo, dividió a las comunidades que vivían dentro de las áreas a ser declaradas bajo el BTC, entre aquellos que pensaban que el BTC terminaría suprimiendo sus derechos y aquellos que se alineaban con los bodo. Los bodo, que han estado haciendo campañas a favor de una "Bodoland", están también divididos sobre el tema, con los grupos armados más importantes, los Tigres para la Liberación Bodo (BLT) a favor, y el Frente Nacional Democrático de Bodoland (NDFB) en contra, ya que este último alega luchar por la independencia total. En esta atmósfera de desconfianza, la gente teme que puedan surgir enfrentamientos violentos.

Ha quedado más claro que nunca que el futuro de las comunidades pequeñas de la región depende de si estas reivindicaciones étnicas pueden ser tratadas y resueltas de una forma que satisfaga a todas las partes. Una tarea difícil, sin lugar a dudas.

Otra lección importante para los habitantes del nordeste de estas experiencias es que cualquier resolución de un tema vinculado con lo étnico no depende del gobierno de India sino de las tribus y comunidades vecinas. La política prolongada de rivalidad sobre territorios, basada en la etnia y en una noción de autodeterminación que ha alimentado un ciclo de reivindicaciones conflictivas respaldadas por medios militares -que parece ser el método favorito para lograr esos objetivos- ha llegado a un punto de saturación, a un punto muerto. La situación ha relegado al olvido cualquier espacio democrático para el diálogo o expresión por parte de la gente en cuyo nombre estas organizaciones dicen luchar. En las actuales circunstancias, existe muy poco espacio para expresar libre y francamente una opinión.

Reconciliación entre los naga

El proceso de paz naga es fundamental para los habitantes de la región nordeste en su conjunto y el proceso entró este año en una fase

804

crucial (ver también el capítulo sobre Nagalim en este volumen). Su importancia para la región está en la creencia que la mayoría de las otras organizaciones armadas de los diversos estados de la región se nutren en forma de entrenamiento, armas y apoyo logístico de las organizaciones armadas naga, particularmente el Consejo Socialista Nacional de Nagalim, que trató y logró crear una amplia coalición de comunidades étnicas con un sentimiento "colonial" anti-indio.

En 2001, debido al cese el fuego, la sociedad naga pareció, por primera vez en los 50 años de lucha, haber logrado algún control sobre el violento fraccionalismo entre los naga y pudo lograr un acuerdo general de renunciar a los métodos violentos. En una acción sin precedentes, los ancianos naga –a través de *Hoho* (consejo tradicional n.d.t.) y diversas organizaciones- emitieron severas advertencias a las facciones militares naga cuando las matanzas fratricidas durante el año amenazaron arruinar la dolorosa construcción de la reconciliación entre los naga. Pero las matanzas y los ataques violentos continúan a pesar de sus exhortaciones.

Un importante avance para el proceso de construcción del entendimiento intercomunitario, después del embrollo del cese el fuego de junio de 2001, es que la sociedad civil naga también ha comenzado un diálogo y una interacción con tribus y pueblos vecinos en reconocimiento de sus intereses y temores legítimos. Sin embargo, aunque este proceso continúa en otras partes de la región, no hay intentos de ninguna de las partes para superar la profunda división entre los naga y los meitei. Esto es fundamental para el futuro de la región.

Creciente división religiosa

Durante el último año, la politización de la religión se convirtió en el factor más importante de la ecuación étnico-comunitaria en el nordeste, aportando una dimensión totalmente nueva a la ya viciada atmósfera. "La cultura indígena del estado está bajo amenaza y la gente está siendo convertida en forma forzada", dijo el Ministro de Aruchanal Pradesh en una de las reuniones culturales, llamando a la resistencia contra la religión cristiana e hindú. En Tripura, se formó un organismo llamado Uttar Purva Bharat Janjati Dharma Samskirti Suraksha Manch para proteger a la religión indígena contra la cristianización. Los sistemas de creencia indígenas, que han sido desalentados por las misiones cristianas, se han convertido en una herramienta útil para los pregoneros del nacionalismo militante hindú como el Rashtrya Swayamsevak Sangh (RSS) y el Vishwa Hindu Parishad (VHP) para su campaña, así como la cristiandad se ha convertido en un instrumento sutil para que las organizaciones armadas étnicas extiendan su influencia a través de la región.

805

Comisión Nacional para la Revisión del Funcionamiento de la Constitución

El gobierno de India estableció la Comisión Nacional para la Revisión del Funcionamiento de la Constitución (NCRWC), cuyas recomendaciones fueron presentadas por el ex Juez de la Suprema Corte, MN Venkatachaliah, el 2 de abril de 2002. Con respecto al nordeste, hizo varias recomendaciones para ampliar los sistemas de autogobierno del Sexto Registro de la Constitución. No obstante, no satisfizo las aspiraciones de varios representantes de las comunidades quienes querían cambios radicales de la estructura. Los documentos se han hecho públicos para comenzar el proceso de debate y diálogo.

Notas y referencias

1 Los pueblos indígenas del subcontinente indio son usualmente llamados adivasi, que significa "pueblos originales". Los pueblos indígenas de la región nordeste de India no son llamados adivasi, ni se refieren a sí mismos de esa manera. Prefieren el término pueblos indígenas o tribales.

2 *Human Rights Watch World Report*, http://www.hrw.org/wr2k2/asia6.html

3 *Human Rights Features Quarterly*, enero-febrero de 2002: POTO: Govt decides to play judge and jury. http://www.hrdc.net/sahrdc/hrfquarterly/Jan_march_2002/poto.htm

4 Ibíd.

5 La sección sobre la promulgación de la Ley de Extensión Panchayat en Jharkand está basada parcialmente en el artículo de Samar Bosu Mullick n.d. Ideología Nacionalista y Autogobierno Tribal en Jharkand. Mimeografiado. El autor suministra además una actualización sobre los acontecimientos más recientes.

6 Guerrilla maoísta, denominada así debido a la región de Naxalbari en el norte de Bengala Occidental, donde comenzó el movimiento guerrillero maoísta en los años 60.

7 *India Together*: http://www.indiatogether.org/stories/dewas.htm

8 Castas oprimidas, generalmente referidas como "intocables". No son consideradas pueblos indígenas.

9 Los khasi y jaintia son dos grupos étnicos bastante grandes que son mayoría en el estado de Meghalaya pero son minoría en los distritos adyacentes al otro lado del límite con Assam.

352
806

353

BEST COPY AVAILABLE

LA SITUACION DEL PUEBLO AMAZIGH

En el norte de Africa, y particularmente en Marruecos y Argelia, el año 2001 se caracterizó por la escalada de la represión contra el Movimiento Amazigh en general, aplastando manifestaciones pacíficas en Argelia y prohibiendo reuniones en Marruecos, y por un nuevo retroceso de la política de los gobiernos con respecto a las libertades y derechos básicos.

Los gobiernos de Libia, Egipto, Túnez y Mauritania continuaron negando la identidad del pueblo amazigh, y continuaron con una intensa política de arabización, mientras que el Movimiento Amazigh siguió con su demanda del derecho de autodeterminación en las Islas Canarias.

Sin embargo, también ocurrieron eventos positivos durante este año. En Argelia, una enmienda constitucional reconoció la lengua amazigh como una lengua nacional. En forma similar, el Rey de Marruecos reconoció la dimensión amazigh en la identidad marroquí y promulgó un Decreto Real para fundar el Instituto Real para la Cultura Amazigh.

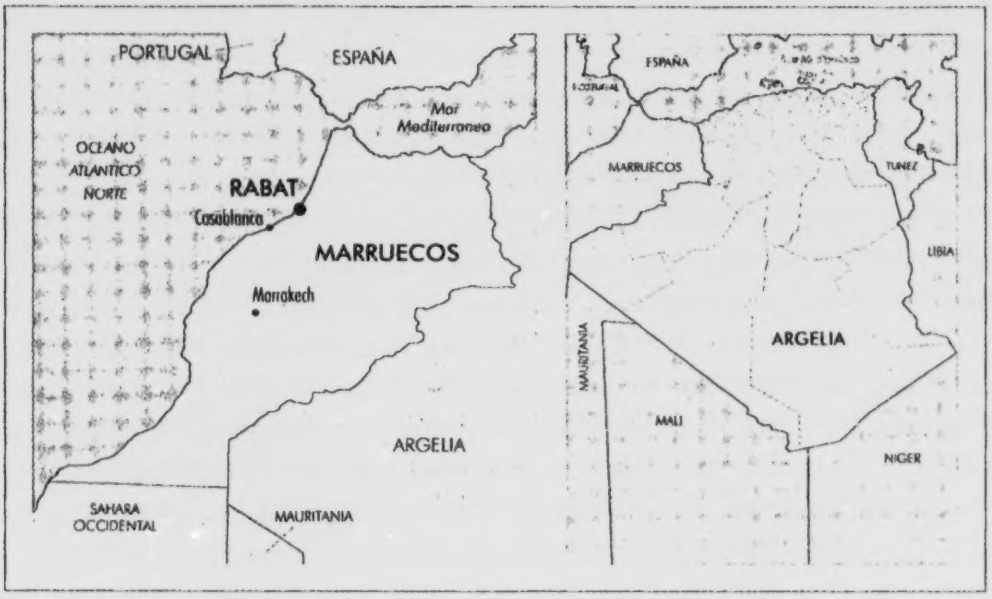
Políticas en el norte de Africa y la lucha del movimiento Amazigh

Los gobiernos del norte de Africa, particularmente en Argelia y Marruecos, están llevando a cabo una política de privatización de acuerdo con las recomendaciones del Banco Mundial. También están elaborando leyes o planes de reforma especialmente en las áreas de la inversión, la justicia y las libertades públicas, y la mayoría de estos gobiernos iniciaron programas de desarrollo para áreas rurales.

Aunque algunos gobiernos, en forma general, admiten que la mayoría de la población es amazigh, se guarnecen tras la "integración" resultante del "Islam y el Árabe" para impedir cualquier cambio o progreso. En nombre de la "unidad nacional" y el "nacionalismo", están refrenando las libertades y están violando los derechos humanos básicos, y siguen promoviendo la integración, asimilación y una intensa política de arabización.

Sin embargo, el movimiento cultural y político amazigh escaló su lucha, particularmente en Argelia y Marruecos, para convencer a los gobiernos sobre la futilidad de las actuales políticas de asimilación.

803



Argelia

El levantamiento de los amazigh en Argelia en junio de 2001
Los amazigh, bajo el yugo de la opresión y la exclusión en Argelia, se vieron obligados a organizarse y revivir sus organizaciones tradicionales. Consiguientemente, se organizaron manifestaciones pacíficas en el área de Tizi Ouzou y en algunas otras regiones vecinas, pero las autoridades aplastaron estas manifestaciones pacíficas con violencia, utilizando armas contra personas amazigh pacíficas, lo que condujo a la muerte de más de cien personas y miles de heridos.

Estas manifestaciones pacíficas fueron realizadas durante el año 2001 y el comienzo de 2002 en forma incesante, lo que llevó al gobierno argelino a poner fin a este movimiento mediante la creación de un –así llamado- grupo de diálogo. La enmienda constitucional que reconoció la lengua amazigh como una lengua nacional tuvo lugar como resultado de las masacres perpetradas por el régimen argelino contra los amazigh en la región de Kabylia. Sin embargo, el Movimiento Amazigh rechazó estas maniobras y exigió el establecimiento de un sistema federal que ayude a los amazigh de Kabylia ejercer un mayor grado de autodeterminación. Los amazigh continuaron sus protestas y su rechazo a la política del régimen y declararon un boicot completo del régimen, sus organismos y representantes y de las elecciones.

BEST COPY AVAILABLE

Marruecos

El gobierno marroquí, que sufrió una reorganización de su gabinete pero que realmente no ha cambiado en tres años con la excepción de algunos ministros, especialmente el Ministro del Interior, declaró que había elaborado algunos proyectos de leyes para proponer al Parlamento durante el año 2001, entre otras, las leyes relativas a la organización del derecho a la huelga, los partidos políticos, el código electoral, la cobertura médica, el Consejo Económico y Social, el código del niño, los medios de difusión audiovisuales, el código laboral, y la reforma del Pacto Social; todos estos proyectos de ley tienen que ser revisados durante el año 2002.

La publicación del Acuerdo sobre la Abolición de la Discriminación Contra las Mujeres

Después del fracaso del gobierno marroquí, durante el año 2000, para implementar el proyecto de integración de las mujeres basado en las recomendaciones de la conferencia mundial de Beijín sobre las mujeres, el 8 de marzo de 2001 se decidió publicar el Acuerdo sobre la Abolición de todas las Formas de Discriminación contra las Mujeres. Esto siguió a una recepción del Rey el 5 de marzo de una serie de figuras prominentes que pertenecen al movimiento de mujeres y la creación de un comité para revisar el Código de Estatus Civil. No obstante, el Movimiento de Mujeres Amazigh fue excluido de la participación en este comité.

A pesar de la importancia de este evento, la implementación de este acuerdo no es posible en Marruecos. Como lo expresó el gobierno marroquí, durante la ratificación de este acuerdo hubo algunas reservas relativas al tema central de la igualdad de hombres y mujeres, bajo el pretexto de que algunos artículos están en contradicción con el "Islam y el Corán".

La prohibición de la Asamblea del Movimiento Político Amazigh

El año 2001 fue el año más activo en el ámbito de iniciativas nacionales e internacionales para el Movimiento Cultural Amazigh. Esto condujo finalmente a la prohibición de muchas actividades de las asociaciones culturales amazigh y la prohibición inesperada del derecho de reunión del Movimiento Político Amazigh en Marruecos, después de que había obtenido una autorización oficial y escrita de la asamblea.

El Comité Declarativo Amazigh, que fue creado en 2000, decidió organizar su mayor reunión en junio de 2001 para discutir la estra-

810

tegia política del Movimiento Cultural Amazigh. Se tomaron todas las medidas y los organizadores obtuvieron autorizaciones escritas para la reunión. Sin embargo, las fuerzas armadas policiales bloquearon todos los caminos que llevaban al Complejo Bouznika, donde se suponía que tendría lugar la reunión, impidiendo a los participantes reunirse allí. La explicación dada fue que la reunión podría causar una alteración de la paz. Como consecuencia, la reunión tuvo que ser realizada en la casa de uno de los participantes. Se decidió crear comités regionales con autonomía para tomar iniciativas y organizar reuniones para ampliar el ámbito del movimiento para poder presionar más al gobierno.

Reconocimiento de la identidad cultural amazigh

Después de la prohibición armada de la asamblea del Movimiento Político Amazigh, en junio de 2001, el Rey Mohamed VI declaró en su Discurso del Trono, el 31 de julio de 2001, que reconocía la identidad cultural amazigh. Esta fue la primera declaración después de 45 años de independencia que la identidad marroquí es una identidad multidimensional y que la dimensión amazigh es una de las facetas, además de las dimensiones arábicas, islámicas, africanas y andaluzas. En octubre de 2001, el Rey declaró la creación del Instituto Real para la Cultura Amazigh.

Vale la pena notar que el Movimiento Cultural Amazigh se centró, entre otras demandas básicas, en la rehabilitación de la dimensión amazigh en la identidad marroquí y en la creación de un instituto para estudios amazigh, además de otras demandas que el Movimiento Cultural Amazigh está empeñado en lograr, particularmente el reconocimiento constitucional de la identidad amazigh y la adopción de la lengua amazigh como lengua oficial, etc. A pesar de este reconocimiento y la decisión Real, todavía se prohíbe poner nombres amazigh a los niños.

El deterioro de las condiciones de los activistas de derechos humanos

Los activistas de derechos humanos de la Asociación de Derechos Humanos Marroquí fueron juzgados y procesados en mayo de 2000 por la manifestación pacífica organizada el 10 de diciembre de 2000. Fueron sentenciados a tres meses de prisión, pero en un juicio de apelación, fueron absueltos a fines de 2001.

Además, la publicación del periódico *Demain* fue prohibida injustamente durante varios meses y su editor, el Sr. Ali Lmarabet, fue procesado simplemente porque publicó que uno de los palacios reales podría ser vendido. Fue sentenciado a tres meses de prisión pero se

811

negó a presentar su caso a la Corte de Apelaciones y declaró que estaba dispuesto a ir a prisión.

Actividades internacionales del Movimiento Amazigh

El movimiento cultural y político amazigh también se ha empeñado en presionar a los gobiernos norafricanos a través de la Carta de las Naciones Unidas y a través de conferencias internacionales y nacionales. Los siguientes son algunos de estos importantes eventos:

La Federación Internacional para los Derechos Humanos: apoyo simbólico a la lengua amazigh

La Conferencia Mundial de la Federación Internacional para los Derechos Humanos, celebrada en Casablanca en la segunda semana de enero de 2001, fue una oportunidad para el Movimiento Cultural Amazigh, representado por la Asociación *Mrik*, para plantear la causa amazigh. La conferencia apoyó la solicitud de respeto del derecho a la diversidad cultural y de la rehabilitación de la lengua amazigh en el norte de Africa y en el mundo. A pesar de la oposición de la Asociación Marroquí de Derechos Humanos, la antedicha conferencia adoptó una importante decisión que fue un apoyo simbólico para el Movimiento Cultural Amazigh en términos de mayor condena de las actitudes oficiales y no-oficiales que rehúsan reconocer el derecho a la diversidad cultural en Marruecos.

La Comisión Africana de Derechos Humanos y de los Pueblos

La 29ª Sesión ordinaria de la Comisión Africana de Derechos Humanos y de los Pueblos, celebrada en Libia en abril-mayo de 2001, fue una oportunidad para plantear por primera vez la causa amazigh en este organismo africano. Esto se hizo en cooperación con una serie de representantes de pueblos indígenas africanos y en cooperación con IWGIA. Durante esta reunión, los participantes condenaron las masacres perpetradas por el gobierno argelino contra manifestaciones pacíficas del pueblo amazigh que demandaba su derecho y el respeto a su identidad civil, lingüística y cultural. Fue una oportunidad para plantear la causa de los pueblos indígenas de Africa en general y del norte de Africa en particular, y hacer un llamado por el establecimiento de regímenes y políticas democráticos que permitan la plena participación en el ámbito cultural y político y reconozcan la identidad cultural de los pueblos indígenas.

812

La Conferencia Mundial Contra el Racismo
El Movimiento Cultural Amazigh participó, a través del Congreso Internacional Amazigh, la Asociación Tigmi, la Asociación de Solidaridad Canaria y la Asociación Tamaynout, junto con el movimiento internacional de pueblos indígenas en la Conferencia Mundial contra el Racismo y la Discriminación Racial, celebrada en Durban, Sudáfrica, en agosto-septiembre de 2001. Este fue un evento muy importante porque adoptó, a pesar de todos los obstáculos, la Declaración de Durban que declaró el reconocimiento de la comunidad internacional de los pueblos indígenas y de su identidad cultural, y adoptó un plan de acción para abolir todas las formas de discriminación en todos los terrenos políticos y culturales.

Para concluir

Parece quedar claro que las cosas se están moviendo muy lentamente y a veces están retrocediendo. A pesar de esta difícil situación, los amazigh creen en la posibilidad de progreso y victoria sobre todas las formas de discriminación y violación de los derechos humanos y de los derechos de los pueblos.

LA SITUACIÓN DEL PUEBLO TUAREG EN EL NORTE Y EL OESTE DE AFRICA

Los tuareg[1] son parte del pueblo indígena amazigh (generalmente conocido como "beréberes") del norte de Africa[2]. Sus tierras tradicionales abarcan unos 1,5 millones de kilómetros cuadrados del Sahara Central y del Sahel (ver mapa), un área aproximadamente tres veces mayor que Francia, su antiguo poder colonial. Ahora se encuentran ocupando grandes zonas[3] del sur de Argelia, el norte de Malí y Níger, con pequeños bolsillos en Libia, Burkina Faso y Mauritania. Su número exacto no es conocido: los censos nacionales o bien ignoran sus categorías étnicas (como en Argelia) o son de dudosa precisión (como en Níger y Malí). Las cifras publicadas abarcan desde 300.000 hasta 3 millones de individuos. Los tuareg del sur de Níger y Malí probablemente suman alrededor de un millón y 675.000 respectivamente[4]. Los tuareg del norte, que habitan las regiones de Ahaggar y Tassili-n-Ajjer en Argelia suman unos 25.000 individuos (20.000 en Ahaggar; 5.000 en Ajjer)[5].

813

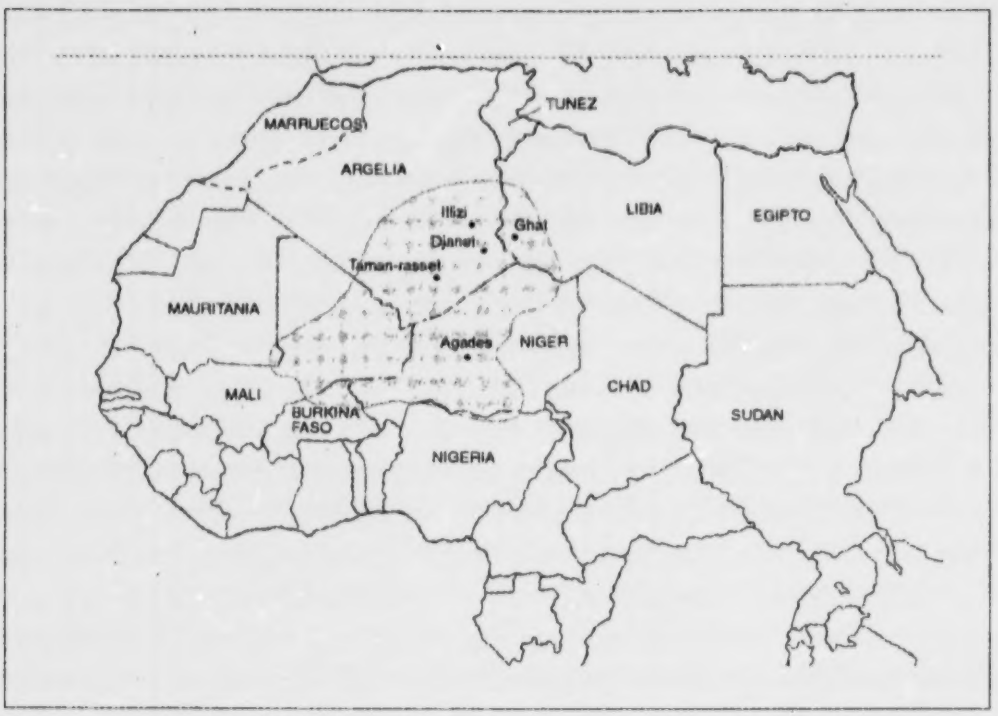
Aunque los tuareg nunca constituyeron un estado o una entidad política, las fronteras nacionales, trazadas arbitrariamente en un mapa en París, dividen lo que era una única entidad cultural y socioeconómica. Aunque son generalmente definidos como pastores nómadas, las economías tradicionales tuareg de estas regiones eran complejas y frágiles, dependiendo en diverso grado del control del comercio de caravanas, incursiones, cría de animales domésticos (camellos, cabras, ovejas y, en el sur, ganado vacuno) y formas de "esclavitud". Casi todos los grupos tuareg mantuvieron relaciones socioeconómicas con las comunidades agrícolas que estaban en los márgenes de sus territorios, especialmente con los pueblos que estaban a lo largo del río Níger, las regiones productoras de mijo del sur de Níger y los oasis de Touat y Tidikelt al norte de Ahaggar. Ciertamente, la economía tradicional de muchos de los tuareg de los distritos malíes de Tombouctou, Gao e incluso Kidal, puede ser mejor descrita como agropastoras.

Las historias recientes de estas poblaciones tuareg han sido sumamente influidas por sus respectivas experiencias coloniales y, durante los últimos cuarenta años aproximadamente, sus muy diferentes historias postcoloniales.

En **Argelia**, en el momento de la Independencia (1962), los tuareg (kel ahaggar y kel ajjer)[6] comprendían un 50% de la población de Ahaggar y Ajjer. Hoy constituyen solamente el 15%. Esto se debe en parte a la emigración a la región de los argelinos, escapando de los disturbios y matanzas que asolaron gran parte del norte del país durante los años 90. Desde la independencia, la mayoría de los kel ahaggar y kel ajjer se han asentado en las muchas aldeas pequeñas y centros de cultivo de Ahaggar y Ajjer, y también en la ciudad principal, Tamanrasset (de 100.000 habitantes). Investigaciones actuales indican que sólo unos 3.000 tuareg argelinos han logrado mantener su estilo de vida nómada. Aunque los tuareg de Argelia comprenden solamente el 0,1% de la población del país, sus tierras tradicionales cubren alrededor del 20% del territorio nacional. Sin embargo, a pesar de unas cuantas "subidas y bajadas", los tuareg de Argelia, comparados con los de Malí y Níger se han acomodado e integrado bastante bien en el estado postcolonial[7]. A pesar del prejuicio expresado por el Estado con respecto al nomadismo en sus años de formación, los tuareg de Argelia han tenido pleno acceso a los beneficios de los servicios e instituciones estatales, especialmente en los campos de la educación, el cuidado de la salud y el mercado laboral.

En contraste con Argelia, la historia reciente de los tuareg tanto en **Níger** como en **Malí** ha sido dominada por su rebelión contra sus respectivos gobiernos. Las causas subyacentes de las rebeliones en

814



ambos países provienen de una combinación de marginación económica y política profundamente arraigada, cuyas raíces se encuentran en la era colonial. Ambos países experimentaron un desastroso círculo de sequías de 1965 a 1990, con picos críticos en 1973-74 y otra vez en 1984-85. En Malí, la ayuda alimenticia destinada para el norte devastado por la sequía fue malversada por altos oficiales del ejército para ser vendida en el exterior, y los beneficios fueron usados para construir y amueblar lujosas casas, conocidas como los "castillos de la sequía" en Bamako. En Níger ocurrió una malversación similar. El resultado de la sequía y del desfalco de la ayuda alimenticia fue que muchos tuareg se vieron forzados a abandonar su base pastora tradicional y migrar dentro de sus países o a través de las fronteras. En ambos países, los tuareg fueron excluidos efectivamente de toda forma de incorporación política al estado postcolonial. Entre los tuareg de Malí, los resentimientos contra el gobierno fueron alimentados por las memorias de su anterior rebelión en 1962-64, que el Presidente Modibo Keita aplastó brutalmente con la ayuda de caza-bombarderos, antes de imponer un severo régimen militar.

Ediciones anteriores de *El Mundo Indígena*[8] han brindado relatos sumarios de las rebeliones que comenzaron en 1990. Para recordar a los lectores esos acontecimientos, a continuación:

BEST COPY AVAILABLE

Descripción breve de las rebeliones tuareg

Las rebeliones tuareg se desataron casi simultáneamente en **Malí** y **Níger** en mayo-junio de 1990, con ataques del *Mouvement Populaire de l'Azaouad* (MPA)[9] contra puestos del gobierno. Los levantamientos que comenzaron en Kidal y Menaka, en Malí, y en Tchin Tabaraden en Níger, fueron encabezados por combatientes tuareg conocidos como *ishumar*. Esta palabra es la berberización de la palabra francesa *chômeur*, que significa "desempleado". Estos eran jóvenes, desilusionados por la represión de sus propios gobiernos y forzados por las sequías de los 70 y 80 a buscar trabajo en otras partes del norte de Africa para sustentar a sus familias. Algunos fueron a Argelia, pero la mayoría terminaron en Libia donde recibieron entrenamiento militar y cayeron bajo la influencia de radicales islámicos y las ideas del Coronel Ghadafi de igualdad y revolución. Algunos fueron incorporados a las fuerzas regulares de Libia, muchos entraron a la "Legión Islámica" patrocinada por Libia y fueron despachados como militantes islámicos al Líbano, Palestina y Afganistán. El colapso del precio del petróleo en 1985 llevó a que cientos de tuareg fueran despedidos de los campos petroleros y retornaron a casa desempleados y resentidos. A ellos se les unieron durante los años siguientes los tuareg relegados de las fuerzas armadas libias después del humillante fracaso de Ghadafi de anexar a Chad. Finalmente, la disolución de la Legión Islámica y la evacuación soviética de Afganistán condujo a una nueva ola de jóvenes desempleados e impacientes con una considerable experiencia militar que retornó a sus territorios natales. Sus ideas de igualdad y justicia, inspiradas en Ghadafi, se sumaron simplemente a la importante dislocación de su sociedad tradicional.

Después de casi dos años de rebelión, fue firmado un *Pacte National* por el gobierno de Malí y el MFUA (*Mouvement et Fronts Unifiés de l'Azaouad*)[10] –los diversos grupos árabes y tuareg que habían tomado las armas. El acuerdo incluía el cese de las hostilidades, el retorno de las personas desplazadas, la integración de los ex-combatientes al ejército, mejor representación política y un plan de desarrollo de diez años para las regiones del norte. A pesar de la firma del pacto, las hostilidades continuaron y recién en 1995 mejoraron las condiciones de seguridad. El fin oficial del conflicto armado de Malí fue marcado por una ceremonia en Tombouctou, en abril de 1996 en la que 3.000 armas, entregadas por las milicias guerreras, fueron quemadas públicamente en una ceremonia conocida como *La Flamme de la Paix*.

No se conoce la cantidad de personas muertas en la rebelión de Malí. En ambos países sucedieron atrocidades perpetradas principal-

816

mente por el ejército o las milicias locales. Varias fuentes ubican el número de tuareg muertos en cada país en más de mil.

Aunque la escala de la rebelión en Níger fue menor que en Malí, ha llevado más tiempo establecer las bases para la paz. En abril de 1995 se firmó un acuerdo entre el gobierno y la coalición rebelde de la *Organisation de la Résistance Armée* (ORA) en Ouagadaougou. A esto le siguió una Conferencia de Mesa Redonda en Tahoua, similar a la Conferencia de Mesa Redonda que precedió a la ceremonia de la «Llama de la Paz", en Tombuctú. El objetivo de la conferencia, a la que asistió el gobierno, ORA, jefes tradicionales y la comunidad donante, era movilizar recursos para la rehabilitación de las zonas pastoras del norte del país y desarrollar una estrategia para la continuación del desarrollo, que no se puede plantear sin una reconciliación duradera de las partes en guerra. Aunque el impulso del acuerdo de paz fue mantenido durante 1996, recién a fines de 1997 se completó el "acantonamiento" de los combatientes de ORA. Como había rechazado el Acuerdo de Ouagadougou, no se negoció la paz con la *Union des Forces de la Résistance Armée* (UFRA) y sus tres movimientos integrantes hasta 1998, pero los últimos ex grupos rebeldes no entregaron sus armas hasta junio de 2000, cuando se celebró una ceremonia de paz basada en el principio de "La Llama de la Paz", en Agades.

Como en Malí, es imposible decir cuántas personas murieron durante el curso de la rebelión tuareg en Níger. No es de sorprender que los relatos de los acontecimientos difieren totalmente. Todavía no está claro qué pasó en la noche del 7 de mayo de 1990, cuando los tuareg atacaron Tchin Tabaraden. Las versiones tuareg dicen que un pequeño grupo de *ishumar* desarmados ocupó la gendarmería como protesta por el arresto de algunos de sus compañeros, y que un guardia fue muerto por su propia arma en la contienda consiguiente. Los relatos oficiales alegan que tres grupos tuareg atacaron la prisión, la *sous-préfecture*, gendarmería y oficina de correos, con el resultado de seis muertos. Lo qué sucedió en las operaciones siguientes del ejército todavía está abierto a serias disputas. Según los relatos tuareg, el ejército de Níger, después de pulverizar a Tchin Tabaraden, continuó su embestida a ciegas en toda la región de Azaouagh, eliminando todos los campamentos nómadas que pudo encontrar. Los ocupantes fueron enterrados o quemados vivos, o despedazados. En Tasara, fueron ahorcadas 24 personas; en Tillia se ejecutó públicamente a adolescentes; una docena de tuareg fueron matados en Maradi y cientos más fueron eliminados en Tahoua. Aunque el gobierno admitió 70 muertes, las organizaciones internacionales ubicaron la cifra en unas 600. Los tuareg alegan que al menos 1.700 de ellos fueron masacrados.

317

La revuelta y la masacre de los toubou

La rebelión de Níger no se limitó a los tuareg. En 1994, los toubou del este de Níger se aliaron con sus enemigos tradicionales, los tuareg, y se rebelaron también contra el gobierno. Durante 1997-98 el ejército aplastó la revuelta, causando la huida de muchos toubou a Nigeria por motivos de seguridad. La firma de un acuerdo de paz entre el grupo rebelde, el *Front Démocratique Révolutionnaire* (FDR) y el gobierno de Níger en N'Djamena (Chad), en agosto de 1998, podría haber abierto el camino para el retorno seguro de los rebeldes. Sin embargo, temerosos de retornar a su territorio, permanecieron en Nigeria, sólo para ser rodeados a mediados de octubre por una operación militar conjunta de las fuerzas de Chad, Níger y Nigeria. Unos 950 refugiados fueron capturados y escoltados hasta la frontera, donde fueron entregados a las tropas de Níger. Las mujeres y los niños fueron separados de sus esposos, quienes nunca más fueron vistos. En enero de 1999, se descubrió una fosa común que contenía 150 cadáveres en la isla de Boultoungoure, en el Lago Chad, en la región de Diffa. El gobierno de Níger negó que hubiera habido ninguna muerte en la región, pero en abril de 1999, el Alto Comisionado para la Restauración de la Paz confirmó la existencia de la tumba y los cuerpos de los 150 hombres, cuyos nombres fueron publicados por la prensa.

La repatriación de refugiados

Aunque la cantidad real de personas muertas en las rebeliones de cada país puedan no haber superado 1.000 o 2.000 personas, el efecto de las rebeliones y la forma en que fueron aplastadas, fueron devastadores. La cantidad de personas que huyeron o fueron desarraigadas en el transcurso de la rebelión nunca se conocerá precisamente. La cantidad de los que huyeron de Malí a Argelia, Burkina Faso, Mauritania y Níger se calcula en 150.000, mientras que se estima que 15-20.000 huyeron de Níger a Argelia y Burkina Faso. La repatriación de estos refugiados ha sido una labor ardua. Comenzó con retornos espontáneos en 1995 y finalizó en junio de 1999 con movimientos que fueron casi completamente asistidos por el Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR). Las estadísticas oficiales de ACNUR de repatriaciones para el período abril de 1995 hasta noviembre de 1998 son las siguientes:

813

	Organizadas	Facilitadas	Espontáneas	Total
Mauritania	18.656	21.041	4.015	43.712
Burkina Faso	4.710	16.375	2.877	23.962
Argelia	7.691	265	42.748	50.704
Níger	1.091	2.928	8.704	12.723
Senegal	679	0	0	679
Total	32.827	40.609	58.344	131.780

El nivel total de desplazamientos forzados en ambos países ha sido probablemente mucho más elevado. La cantidad de personas desarraigadas previamente que residían en los campamentos de retornados del programa de ACNUR en Malí se estima en 305.000. Esto suma el 25% de la población total estimada del norte de Malí. Si se incluye a las personas desplazadas por el conflicto de Níger, entonces probablemente hablamos de una cifra que se acerca al medio millón: eso es aproximadamente un cuarto de la la población total tuareg estimada. También debería recordarse que un gran número de tuareg ya se había desplazado a otras áreas de sus propios países o a través de las fronteras, especialmente de Malí y Níger a Argelia, en su intento de escapar a la devastación causada por el círculo vicioso de sequías. Muchos de estos tuareg no han retornado a sus territorios originales, y probablemente nunca lo harán. Muchos tuareg de Malí y Níger que cruzaron a Argelia ya sea para escapar a la devastación de la sequía o del conflicto todavía se encuentran allí, y muchos de ellos se han casado con miembros de la población local.

El establecimiento de lugares de reasentamiento

El programa de asistencia a los retornados financiado por ACNUR ha sido un paso importante hacia la reconstrucción de la vida civil en el norte de Malí, programa que fue implementado en colaboración con el Programa Mundial para la Alimentación (WFP) y once ONGs como colaboradoras de la implementación. El programa, que duró de 1995 a junio de 1999, brindó asistencia a 638 sitios de asentamiento de retornados en todo el norte de Malí. Se cavaron o rehabilitaron 287 pozos de agua, se realizaron 123 perforaciones en busca de agua y se instalaron numerosas bombas de agua solares o a diesel. Se organizaron programas de distribución de alimentos y de alimentos-a-cambio-de-trabajo y se puso a disposición préstamos y subsidios a grandes cantidades de individuos o asociaciones locales.

BEST COPY AVAILABLE

Las evaluaciones de este programa han destacado una serie de logros y fallas. El éxito general del programa proviene de dos factores principales: la decisión de permitir la selección de reinserción por parte de los mismos retornados y el enfoque comunitario integrado adoptado por el programa. Las fallas del programa han sido la lenta e inadecuada respuesta de financiación de los donantes; su decisión de no apoyar medidas para ayudar a la rehabilitación del ganado para las sociedades pastoras, favoreciendo así la sedentarización a expensas de la ganadería, a pesar del hecho que la ganadería había sido la ocupación tradicional de muchos beneficiarios; y su naturaleza a corto plazo. Consciente de los defectos, ACNUR aseguró la cooperación de colaboradores dispuestos a continuar el trabajo. Uno de esos colaboradores, el Programme Mali-Nord (PMN), financiado por la agencia alemana *Gesellschaft fur technische Zusammenerbeit* (GTZ), que opera en la región de Tombouctou, en una zona entre el río Níger y la frontera con Mauritania, ha sido inmensamente exitoso. En cambio, las áreas de Kidal y Gourma-Rharous han recibido muchísimo menos aportes del gobierno y de las agencias de desarrollo. La zona de Kidal quedó bajo un programa financiado por FIDA (Fondo Internacional de Desarrollo Agrícola) conocido como PSARK (*Projet de Sécurité Alimentaire et des Revenues de la Zone de Kidal*) ya desde 1989. Lamentablemente, el proyecto ha logrado muy poco, complicándose en procedimientos burocráticos laberínticos que lo han convertido en parte del problema en vez de parte de la solución.

Hubiera sido sabio que ACNUR en Malí hubiera seguido el ejemplo de Níger y nombrara un asesor para formular propuestas para proyectos de desarrollo de varios años que cubrieran las necesidades a largo plazo de las comunidades vulnerables, especialmente con relación a la rehabilitación del ganado. No obstante, el desarrollo y la implementación de esos proyectos en Níger han sido trabados por el derrocamiento del régimen democrático y la continua y extensa violación de los derechos humanos. En 1996 Ibrahim Baré Mainassara derrocó al Presidente electo Mahamane Ousmane. Tres años más tarde, en abril de 1999, el mismo Mainassara fue muerto a tiros por su propio guardaespaldas presidencial en un suceso que el Mayor Daouda Malam Wanké, que tomó las riendas del poder, describió como un "incidente desafortunado". Aunque Wanké permitió la realización de elecciones a ser celebradas en noviembre de 1999, conducentes al retorno del régimen democrático en la persona de Mamadou Tandja, continuaron las violaciones de derechos humanos. Lo más serio es la incorporación en la nueva Constitución, afirmada por una nueva ley del Parlamento en enero de 2000, de una amnistía para los perpetradores de las violaciones de derechos humanos durante los golpes de 1996 y 1999. La consagración de la impunidad en la nueva

820

Constitución significa que no se ha realizado ninguna investigación sobre la masacre de toubou en la isla de Boultoungoure o la masacre de tuareg en 1990 en Tchin Tabaraden. El resultado del derrocamiento del régimen democrático y la violación de derechos humanos hizo que muchos donantes internacionales, incluyendo el gobierno francés, suspendieran la ayuda internacional a Níger – una medida que exacerbó aún más el sufrimiento de los retornados tuareg, quienes en ese momento estaban siendo reasentados en las regiones de Tahoua y Agades. Su situación se deterioró aún más como consecuencia del régimen de Mainassara que coincidió con tres años consecutivos de sequía. Como si eso no fuera suficiente, el retorno de Níger a la democracia a fines de 1999 coincidió con un año aún más severo de sequía, reduciendo la cosecha de 2000 a un fracaso casi completo. Esto significó que unas 3,5 a 4 millones de personas, más de un tercio de la población del país, enfrentó una severa hambruna a mediados de 2001. La situación, empeorada por la demora e inadecuación de la ayuda internacional, tuvo como resultado que poblaciones enteras se desplazaron en la fútil búsqueda de alimentos. Gran parte del país ha sufrido una degradación ambiental a gran escala y los desventurados campesinos han cortado árboles para venderlos como leña y obtener algún dinero. La sequía del año fue considerada tan devastadora como la de 1984. Los pedidos de alimentos llevaron a la donación de más de 26.000 toneladas de alimentos, principalmente de Nigeria. Durante el año, también miles de personas contrajeron una severa meningitis cerebro-espinal epidémica que mató a varios cientos de personas. Sin embargo, en junio de 2001 comenzaron a caer buenas lluvias, con precipitaciones superiores al promedio y bien distribuidas, que continuaron durante los meses cruciales del verano hasta septiembre. Esto significa que los años 2001-2002 producirán suficiente grano para que quede solamente el 16% de la población (de acuerdo al Sistema de Prevención de la Hambruna) enfrentando la inseguridad alimentaria en 2002. Las lluvias también provocaron intensos brotes de fiebre tifoidea y se informó de cientos de casos en el norte de Agades.

Se dice que las buenas lluvias de 2001-2002, que fueron las más intensas en cuarenta años en Malí, tuvieron como resultado inundaciones en Bamako y otras partes a lo largo del Níger. Sin embargo, lo positivo es que Malí espera producir un excedente de alimentos este año y es improbable que requiera ayuda alimenticia entre febrero de 2002 y la próxima cosecha en septiembre-octubre. Las lluvias han sido también una rara bendición para los pastores.

La buena cosecha de Malí llega con un nuevo presidente. El carismático ex-General Amadou Toumani Touré, el hombre que una vez dijo que "sólo un idiota" querría ser el jefe de estado de Malí, fue

321

confirmado como Presidente el 23 de mayo de 2002, después de dos rondas de votación[11]. Va a suceder a Alpha Oumar Konaré, quien fue presidente durante dos términos de cinco años (1992-2002) después de que Touré, el entonces jefe del batallón de paracaidistas hubo arrestado al corrupto dictador, General Moussa Traoré (1976-1991) y hubo establecido un gobierno interino para celebrar elecciones libres. Konará y Touré han jugado roles importantes en la transición del país a la democracia y en el exitoso proceso de paz con los movimientos rebeldes, predominantemente tuareg. La adhesión de Touré a reformas económicas, apertura política y derechos humanos es prometedora para el futuro inmediato de Malí.

Los roles de Argelia y Libia

A pesar de su propia crisis política de la última década, **Argelia** ha jugado un papel importante y continuo en el intento de resolver lo que se denomina comúnmente en Malí y Níger como el "problema tuareg" y así llevar paz y estabilidad a la región. Este rol ha sido, por supuesto, de inteligente autointerés, pero se destaca en marcado contraste con el del Coronel Ghadafi de **Libia**, quien ha sido la fuerza más particularmente desestabilizante de todo el Sahel y gran parte del Sahara Central durante algún tiempo.

Una nueva era de bandolerismo

Existe un peligro en considerar la retirada del apoyo de ACNUR en 1999, el retorno al régimen democrático en Níger en 1999 y las elecciones de 2002 en Malí, junto con las abundantes lluvias de 2001, como una "clausura" de la historia de la rebelión tuareg. Ciertamente, no se ha logrado la futura estabilidad y seguridad de lo que se considera tradicionalmente como "áreas tuareg" –**el norte de Malí, el norte de Níger y el sur de Argelia**. Por el contrario, los últimos tres o cuatro años, desde alrededor de 1998, quizá un poco antes, han visto a gran parte de esta zona, especialmente la inmensa región del valle Azaouagh que se extiende al suroeste de Tamesa hasta las regiones de Kidal y Menaka en Malí, convertirse en el foco de una nueva forma de bandolerismo y el punto decisivo para la futura estabilidad política y seguridad de este gran rincón de Africa.

El bandolerismo de la región no sólo ha aumentado en la última década como resultado del retorno de los *ishumar*, las oportunidades para contrabandear y la circulación de armas pequeñas en toda la región, sino que ha asumido una nueva forma y escala desde fines de

822

los años 90 con la llegada a la región de uno de los más coloridos rebeldes de Argelia, un cierto Mokhtar Ben Mokhtar. Mokhtar es un metlilli chaamba (no un tuareg) y se puso él mismo fuera de la ley del Estado argelino cuando, después de un período en Afganistán (donde se dice que perdió un ojo), trató de vengar la muerte de su hermano quien había sido muerto por la policía cuando lo capturaron en un intento armado de contrabando. Hacia 1998, su "guerra contra el Estado de Argelia" (no su pueblo, subrayó cuidadosamente) resultó en que muchos de los caminos del sur de Argelia, especialmente la principal autopista de In Salah a Tamanrasset, fueran inseguros para viajar a menos que se contara con la protección de un convoy militar. En la segunda mitad de 1998, su banda, pequeña pero bien armada, tiene la reputación de haber secuestrado 365 vehículos de doble tracción, en su mayoría de la gendarmería argelina, compañías petroleras y otras organizaciones estatales. También se dice que derribó un avión militar. En 1999, las fuerzas de seguridad argelinas se lanzaron a la ofensiva y lo forzaron efectivamente a refugiarse en el vasto y poco conocido valle de Azaouagh, donde su presencia (descrita como "amenazas terroristas de disidentes tuareg y fundamentalistas de GIA[12]") condujo a la cancelación de la parte de Níger del rally París-Dakar. Con el fortalecimiento de la seguridad argelina, incluyendo intensas persecuciones por helicópteros armados a lo largo de la frontera sur de Argelia, las actividades de Mokhtar se han transformado cada vez más desde su guerra profesada contra el estado de Argelia, al manejo de contrabando a gran escala de cigarrillos, armamentos, y entrenamiento y aprovisionamiento de GIA[13]. Aún más peligrosas para la estabilidad y seguridad de la región que las propias actividades de Mokhtar son la cantidad desconocida de "copiones" y redes asociadas que ha creado, y la atracción que sus actividades y su reputada ideología fundamentalista ofrecen a los muchos jóvenes de la región, en su mayor parte desocupados.

La razón de por qué este tipo de bandolerismo ha sido capaz de establecerse en esta región es simplemente debido al "espacio abierto a ellos" por las deficiencias de las antes mencionadas agencias de desarrollo en establercerse en estas áreas. Este fracaso proviene de la negativa de la ONU y otras agencias de colaboración para financiar el nivel requerido de seguridad que ni Malí ni Níger han sido capaces de suministrar.

El continuo desarrollo de esta forma de bandolerismo, en esa escala y en un área geográfica tan extensa no es solamente un importante impedimento para el futuro desarrollo social, político y económico de gran parte del norte de Malí y el norte de Níger y, por lo tanto, para el bienestar de los mismos tuareg, sino que amenaza la estabilidad y seguridad de gran parte del Sahel y del Sahara Central.

Renovada confianza y conciencia política

En conclusión, debería destacarse que los acontecimientos descritos en este artículo, especialmente las rebeliones tuareg en Níger y Malí, y el subsiguiente movimiento y desplazamiento de familias y grupos tuareg de sus regiones tradicionales tuareg de Argelia, Malí, Níger y aún más lejos, están teniendo profundas implicaciones sociales y políticas, especialmente con respecto a la activación de los vínculos sociales largamente latentes (de parentesco, tribales, etc.) entre las regiones que han sido transferidas del "dominio tuareg" a "dominios nacionales" por líneas arbitrarias trazadas en un mapa. La atención se ha tornado a lo que ha estado sucediendo en los países de cada uno. El acceso a nuevas tecnologías, especialmente el teléfono y la Internet, junto con un creciente conocimiento y conciencia de los convenios internacionales sobre derechos humanos e indígenas, está dando a los pueblos de estas regiones una renovada confianza y consciencia política. En el verano de 2001, el Presidente de Argelia, Abdelaziz Bouteflika, visitó el sur para ser acogido en Illizi y Djanet con una "petición" firmada que demandaba la remoción de la oficina del *wali*[14], y en las calles por una mezcla de respeto y cánticos procaces, cuyo mensaje era bastante claro: "Si él (el Norte) no quiso que el Sur fuera parte de Argelia, ¡tendría que habérselo dicho!". Él notó los ánimos y a su regreso despidió debidamente al *wali*. Los tuareg del norte están otra vez mirando hacia el sur, y los tuareg del sur están mirando hacia el norte.

Notas

1 La palabra "tuareg" es una designación arábica y raramente usada por los tuareg, excepto en conversaciones con extraños que ellos saben que probablemente no entenderán sus complejos términos de autodesignación que tienden a referir a sus propias categorías sociales, que abarcan cosas como la membresía al grupo de ascendencia, clase social y residencia.

2 Ver *El Mundo Indígena 2000-2001*, pá. 226. Más o menos al tiempo de la publicación de este número (abril de 2001), los gendarmes de Kabylia dispararon injustificadamente contra detenidos, lo que provocó extendidos disturbios beréberes con manifestaciones y violencia que se extendieron a muchas otras regiones, incluyendo la capital, Argel. Después de un año de protestas casi continuas y disturbios de los pueblos amazigh en el norte del país, el gobierno anunció finalmente en abril de 2002 que el amazigh (beréber) sería en adelante reconocido como lengua nacional.

3 Aproximadamente un millón de kilómetros cuadrados en Argelia, Malí y Níger.

4 Basado en cifras nacionales, pero probablemente muy imprecisas.

824

5 Hay unos pocos miles de tuareg en Libia, en las regiones de Ghat, Ghadames y el Murzuq.

6 Kel quiere decir "pueblo de".

7 Una colección de ocho trabajos investigativos contemporáneos, que detallan la situación de los tuareg de Argelia, está siendo preparada como "Edición Especial", titulada: "Los tuareg de Argelia: cambio social y derechos indígenas" por el *Journal of North African Studies*. La publicación se espera para 2003, vol. 8, no. 2.

8 Ver ediciones previas de *El Mundo Indígena* durante los años 90, incluyendo el Anuario de 1997-98.

9 *Azaoua* (*Azawa*) es la palabra para un tazón para comer así como también el nombre de una depresión al norte de Tombouctou. El término se ha convertido en la designación de todas las regiones norteñas de Malí, Tombouctou, Gao y Kidal.

10 El MFUA comprendía: la *Armée révolutionnaire de libération de l'Azaouad* (ARLA); el *Front islamique arabe de l'Azaouad* (FIAA); el *Front populaire de libération de l'Azaouad* (FPLA); y el *Mouvement populaire de l'Azaouad* (MPA). En 1994 se desató una lucha entre el MPA y ARLA por el control de Kidal, después de la cual el ARLA se dividió y la mayoría aceptó la dominación del MPA , mientras que la minoría hizo una alianza con el FPLA.

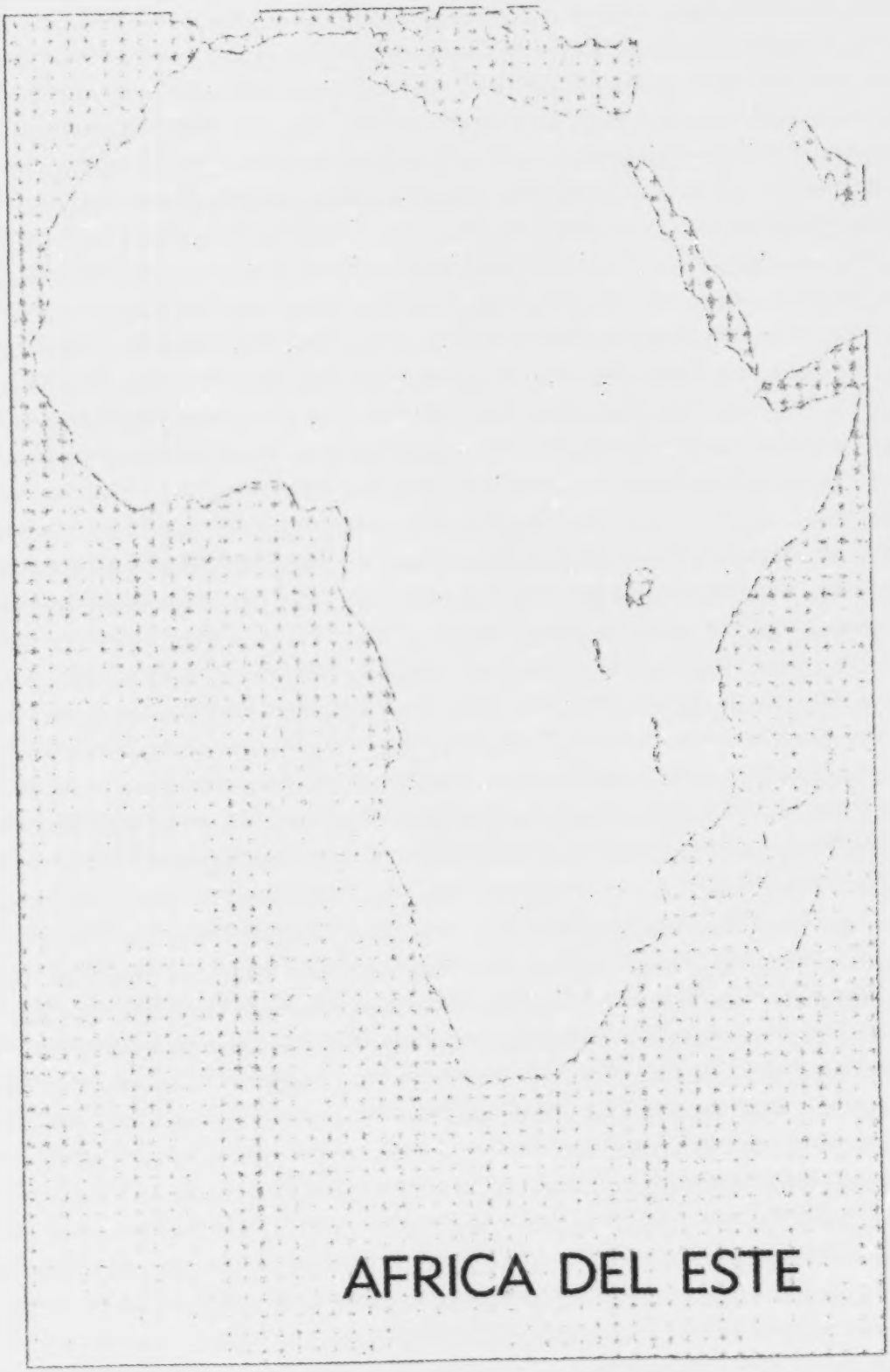
11 Touré obtuvo el 65% por ciento de los votos, pero de menos del 20% de los electores registrados.

12 Grupo Islámico Armado de Argelia (n.d.e.).

13 Los medios de difusión han informado su muerte en seis ocasiones.

14 El director de la administración regional civil, nombrado por el Presidente.

825



373

BEST COPY AVAILABLE

ETIOPÍA

Crisis política

Durante el año que examinamos sucedieron una serie de acontecimientos que sacudieron la ideología política fundamental del Frente Democrático Revolucionario de los Pueblos de Etiopía (EPRDF). Los estudiantes de la Universidad de Addis Abeba manifestaron contra la situación deplorable del predio universitario. Estas protestas generales causaron la muerte de 41 estudiantes y otros manifestantes, arrestos de la población civil, miembros de los partidos de oposición y otros prominentes activistas de los derechos humanos. Además, el asesinato de Kinfe Gebredin, un cuadro importante del Frente de Liberación Popular Tigray (TPLF) y jefe de las operaciones del gobierno, fue un serio retroceso para el proceso político del país. Su muerte, agregada a luchas de poder y divisiones dentro del partido gobernante TPLF/EPRDF, dio lugar a serias dudas con respecto al proceso de construcción de la democracia.

La crisis dentro del partido político gobernante ha llegado temporalmente a un fin. Sin embargo, los efectos generales a largo plazo sobre la población indígena del país merecen una atención especial. Es importante considerar si la situación política ha traído algún cambio significativo a la actual constitución o estructura administrativa que reconoce diversos territorios de pueblos indígenas en el país. Entre todas las previsiones llamativas, que incluyen una cláusula hipotética sobre el derecho de autodeterminación, no debería negarse a la actual constitución Federal su significación potencial para la población indígena. La constitución incorpora importantes instrumentos internacionales que Etiopía, como miembro de la ONU, ha ratificado, firmado, adoptado y tiene obligaciones de respetar y cumplir. Sin embargo, muchos estados de pueblos indígenas (estados como Gambela, Somali, Afar y Benishungule-Gumuze) enfrentan numerosas dificultades para implementar sus derechos constitucionales debido a la manipulación de los procesos políticos y económicos por parte de las autoridades federales.

Las consecuencias de la crisis política del TPLF se han manifestado en el estado Gambela, donde han surgido serias divisiones entre el grupo étnico nuer como parte de la lucha política por el poder. Los efectos fueron devastadores para las ambiciones y aspiraciones de los pueblos indígenas de la región. En respuesta al conflicto, el gobierno central restringió las actividades de la organización Frente Democrático Popular de Gambela (GPDF) y el partido político basado en los nuer, Partido Democrático Unido de los Pueblos de Gambela (GPDUP). La restricción sobre estos partidos políticos aliados del EPRDF expu-

827

DISTRITOS ADMINISTRATIVOS
DE LA REGION GAMBELA EN ETIOPIA

so el fracaso de sus líderes para mantener una paz duradera entre diferentes grupos étnicos y dentro de los mismos grupos étnicos. El GPDF fue una creación de la dirección del EPRDF con el objetivo de eliminar los remanentes de la organización popular de liberación, el Movimiento de Liberación Popular Gambela. Tres personas resultaron muertas, 18 fueron heridas y más de 100 personas nuer inocentes fueron arrestadas durante el conflicto.

Prospección petrolífera

La amenaza contra los indígenas anuak causada por la primera fase de prospección petrolífera en sus áreas, finalizó cuando la compañía petrolera canadiense involucrada se retiró a último minuto. Sin embargo, el asunto está lejos de ser superado. Recientemente, una delegación etíope de alto nivel encabezada por el Primer Ministro Meles Zenawi visitó Rusia, donde se dice que realizó un acuerdo de prospección en el área de Gambela. Como en el caso de las primeras negociaciones con la compañía petrolera canadiense, no se han realizado consultas con los pueblos indígenas afectados. En las negociaciones con los rusos se ha puesto de manifiesto la misma tendencia, ya que no se toma en cuenta el consentimiento de los pueblos indígenas que están siendo completamente aislados del proceso de negociación.

BEST COPY AVAILABLE

Las estrategias de prospección petrolífera suponen una seria amenaza potencial para los pueblos indígenas de Etiopía. Queda por verse si estas estrategias pueden llegar a eliminar completamente a los pueblos indígenas y despojarlos de sus tierras.

Bajo el pretexto del mantenimiento de la paz fronteriza internacional, se está en proceso de designar tres campamentos militares que pronto serán operativos. De acuerdo a un informe de la región, estos sitios incluirán dos áreas bajo escrutinio para la prospección petrolera: Adhura y Jor. El tercer sitio está localizado en el aeropuerto bajo control militar a pocas millas de la ciudad de Gambela. Estos sitios militares adicionales aumentarán indudablemente el personal militar en la región, lo que hará la vida más difícil que nunca. A pesar del interés de seguridad del gobierno, se cree que el establecimiento de campamentos militares en el país es una preparación de avanzada para la prospección petrolera de la nación.

Por razones de prospección y de otro tipo, la división que estaba previamente localizada en Jimma para comandar las actividades militares de la parte occidental del país ha sido trasladada a Gambela, amenazando el libre movimiento de la población indígena en el área. Muchos indígenas inocentes han sido víctimas de sus operaciones.

Conflicto étnico

> *"La guerra no surge de un día para el otro. No importa cuán disparatada o compleja pueda ser una sociedad, la violencia comunal no surge sin provocación. Es inevitablemente la manifestación de hostilidad y agresión acumuladas entre partes opuestas..."*
>
> *"El conflicto se desata generalmente cuando una parte tiene la capacidad de incitar a la violencia, mientras que la otra no tiene medios para defenderse, ni tampoco para contraatacar"*[1].

Ni los anuak ni los majanger, que estuvieron involucrados en un conflicto sangriento a comienzos de 2001, tenían la capacidad o el motivo para incitar a la violencia. El conflicto étnico que tuvo lugar en Godere y que devastó a los distritos vecinos tanto económica como socialmente, no puede ser atribuido a los dos grupos afectados. Históricamente, los grupos étnicos anuak y majanger han convivido sin ningún signo de conflicto u hostilidad. No se han notado hostilidades y agresiones acumuladas de ningún tipo en su relación.

Parece que el conflicto surgió después de que un grupo de mujeres y hombres anuak fue torturado, violado y asesinado por miembros radicales majanger. Después de este trágico incidente, se informó extensamente sobre una amplia gama de masacres de hombres y

829

mujeres inocentes de ambas etnias, destrucción de propiedad y desplazamiento de habitantes inocentes de los distritos vecinos – Gog, Abwobo y Godare.

Las autoridades federales han permanecido silenciosas sobre esos conflictos étnicos a gran escala, que costaron las vidas a niños, mujeres y ancianos, incapaces de defenderse. No se ha hecho ningún intento de investigar la causa del conflicto étnico ni de llevar a los responsables ante la justicia. Tampoco ha habido información de los medios locales o nacionales sobre el conflicto. A diferencia de otras áreas del país, en el área de Gambela no está permitida, en forma no oficial, la cobertura de los medios internacionales.

Educación

En Etiopía, que es una sociedad multiétnica, el sistema educativo refleja la cultura y lenguaje abisinios típicos. El amárico sigue siendo la lengua dominante en todo el país y, hasta el derrocamiento del régimen militar en 1991, no había un interés serio de incorporar otras lenguas.

La Política de Educación y Lenguas de 1994 del gobierno de transición de Etiopía, que acordó derechos igualitarios a las lenguas de los pueblos indígenas, fue un pilar para la implementación positiva de los instrumentos internacionales que habían sido acordados de palabra por sucesivos gobiernos del país. Este rechazo único de las políticas asimilacionistas y culturalmente destructivas fue reafirmada por las previsiones de la Constitución de 1994, que reconoce que todas las lenguas etíopes gozan del mismo reconocimiento estatal. Además, la Constitución sigue siendo un punto de referencia con su previsión de que los miembros de la federación tienen el derecho a determinar sus respectivas lenguas funcionales (Constitución de Etiopía, 1994: artículo 5). Sin embargo, el progreso en el logro de esta política social sectorial en los territorios indígenas ha quedado atrás por diversas razones.

En años recientes, se han realizado esfuerzos para menoscabar las lenguas indígenas, incluyendo el establecimiento de escuelas diferenciadas en los territorios indígenas que brindan educación en lengua amárica. En el caso de Gambela, la estrategia para socavar las lenguas de los pueblos indígenas se puso en efecto en el año 2000. Ahora está en funcionamiento una escuela diferenciada que brinda educación en amárico a pequeños sectores exclusivos de la sociedad.

No hay duda que la existencia de un sistema diferenciado de educación, accesible solamente para unos pocos miembros comunitarios, será a largo plazo una base de poder dentro de la nación. La

mayoría de los niños indígenas que construirán la nación serán discriminados, ya que se otorga al amárico, que todavía sirve de lengua oficial en el ámbito federal y estatal, un estatus especial sobre las lenguas indígenas. Dada la batalla política de 1995 dentro del estado, que convirtió a la lengua y la cultura amárica en un criterio dominante en la competencia por el poder, es obvio que esta tendencia es una receta para la discriminación. Durante la lucha política de 1995 entre los nacionalistas de Gambela y los grupos indígenas amaracanizados, la población inmigrante de las montañas asentada en los pueblos apoyó completamente una política de asimilación cultural de los pueblos indígenas.

Por lo tanto, no hay duda que a largo plazo, ese sistema educativo favorecerá a unos pocos indígenas; principalmente a hijos de aquellos que tienen el poder dentro del movimiento y aquellos pocos que sean capaces de sustentar la educación de sus hijos.

Elecciones locales

En febrero/marzo de 2001 se celebraron elecciones locales en muchas partes del país –Afar, Tigray, Ahmara y Oromia- con la excepción de las partes meridionales, donde las elecciones locales tuvieron lugar hacia fines de año. No queda claro cuándo se celebrarán elecciones locales en los estados de Gambela, Somali y Benishangul-Gumuz, cuyos habitantes están esperando para poder votar.

Como se acerca la estación de lluvias, es muy difícil que las elecciones en estos estados del país puedan ser anticipadas para que se realicen durante el período que cubre este informe. Hay razones obvias para que el gobierno etíope dilate las elecciones locales en estas regiones tan sensibles. Los partidos populares indígenas opuestos al EPRDF y sus aliados regionales gozan del apoyo mayoritario en estas áreas. Por lo tanto, es una técnica importante del gobierno etíope dilatar las elecciones en estas regiones donde los partidos de oposición tienen una base de sustentación masiva comparado con los partidos políticos controlados por el EPRDF para controlar a los partidos populares indígenas.

Desequilibrio en la participación

Etiopía, como entidad moderna, pasó a existir a través de la conquista y el simple reclamo de naciones virtualmente autónomas del oeste, sur y este. Durante su expansión histórica, sus líderes han hecho muy poco para ayudar a los territorios recién adquiridos a participar en

631

el desarrollo del país como un todo, y en la formulación de políticas y programas económicos y sociales. Aunque la economía del país está sustentada principalmente en recursos de las partes sur, oeste y este del país, los habitantes de esas áreas han sido simples destinatarios de políticas y programas, algunos de los cuales no toman en cuenta su antecedente socioeconómico.

Poco se podría decir sobre la participación de los pueblos indígenas en el proceso de toma de decisión a nivel nacional durante los regímenes imperiales y militares. Relegados como ciudadanos de segunda clase, su potencial y capacidad fueron considerados sin valor. El régimen actual debería tener un nuevo punto de partida ya que proclama promover la gobernación democrática y una forma federal de organización administrativa. Sin embargo, desde que tomó el poder en 1991, el gobierno del EPRDF ha cerrado las puertas a la participación indígena en las políticas y programas importantes del país. Por lo tanto, no ha habido ningún cargo ministerial o viceministerial del gabinete para ningún candidato de los estados de Gambela o Benishungul-Gumuze.

Por razones que no son claras, su participación ha sido limitada al Servicio de Relaciones Exteriores donde un par de ellos han sido nombrados para integrar las misiones representativas etíopes. Sin embargo, lejos del proceso de toma de decisión, su influencia puede ser muy limitada.

Referencia

1 **Rupesinghe, Kumar y Sanam Naraghi Anderlini. 1998.** *Civil Wars, Civil Peace. An Introduction to Conflict Resolution*. London: Pluto Press

PROCESOS REGIONALES

La Asamblea Legislativa del Este de Africa y el factor de género

El proceso de cooperación regional entre los tres estados africanos orientales (Kenia, Tanzania y Uganda) continúa y, hacia fines de año, culminó en la creación de la Corte de Justicia del Este de Africa

832

y la Asamblea Legislativa del Este de Africa. El Presidente de la corte es el Juez de la Suprema Corte de Kenia, Moijo Ole Keiwua, cuyo nombramiento fue muy celebrado por los maasai quienes ven en él la oportunidad para forjar vínculos más estrechos entre las comunidades que han estado divididas por la frontera política. Hasta ahora, sin embargo, la corte ha recibido en teoría el mandato de tratar asuntos legales entre los estados, a pesar del hecho que hay muchas cuestiones entre las comunidades que la misma gente considera que necesitan una resolución de la corte. Por lo tanto, será un desafío lograr que la corte no se concentre solamente en los asuntos de estado y se acerque a los temas comunitarios. Los medios de difusión de Kenia se refieren a ese interés como "estrecho" y "localista".

Lo más destacado en las nominaciones para la Asamblea Legislativa del Este de Africa es el factor de género que estuvo presente en la adjudicación de escaños, ya que las mujeres tenían que disponer de una serie de escaños por cada estado. Sin embargo, en Kenia, aunque los partidos de oposición cumplieron con la cantidad de mujeres nominadas, el partido gobernante, KANU, no estaba bien preparado. Sólo pudo adjudicar un escaño, e incluso ese escaño le fue otorgado a la esposa de uno de los ministros del gabinete. Aunque la nominada fue nombrada por derecho propio, la actitud señalizaba que el partido gobernante estaba tratando de controlar a su favor los asuntos del Parlamento del Este de Africa. Sin embargo, la reticencia a otorgar derechos a las mujeres llevó a la conclusión que, de los tres estados del este africano, Kenia es el país donde las relaciones de género son más tensas. Los otros dos países han desarrollado tradiciones de reservar un tercio de los escaños parlamentarios y de las autoridades locales para las mujeres, y Uganda es el país que ha ido más lejos ya que tiene a una mujer como vicepresidente.

Festival Cultural Maa en Nairobi

En diciembre de 2001, la Asociación de Mujeres Reto fue otra vez anfitriona del Festival Cultural Maa anual. Esta es una organización de mujeres maasai que incluye a mujeres de cinco distritos de Maasailand de Kenia y que también colabora con sus contrapartes tanzanianas. El Festival reunió a las cinco sesiones de la comunidad maa (maasai, samburu, iltiamus, arusha y parakuyo) y asistió un total de unas 800 personas de las cuales 100 eran de Tanzania. La participación de Tanzania fue posible gracias al apoyo de IWGIA.

La ocasión también se utilizó para trazar una estrategia conjunta sobre formas de proteger, promover y revivir la cultura y la identidad maa. Los festivales culturales brindan una oportunidad perfecta para

633

que el pueblo maasai desarrolle una colaboración interfronteriza y reviva algunos elementos culturales que de otra manera se perderían. El público en general fue informado sobre la riqueza de la cultura maa y la ocasión se utilizó también para preparar un trabajo de base para una futura promoción cultural maa.

Se decidió estratégicamente que los festivales culturales maa deberían ser utilizados en el futuro:

- Para aumentar la unidad del pueblo maa en diferentes áreas.
- Para fortalecer el pueblo y las organizaciones maa a través de la mejora de la capacidad de gestión.
- Para actuar como vínculo entre el pueblo y las organizaciones maa de Kenia y Tanzania.
- Para abogar y hacer lobby sobre temas de interés fundamental para el patrimonio cultural maa.
- Para servir como control del maltrato y el abuso del nombre y la cultura maa.
- Para facilitar un proceso de identificación, análisis y tratamiento conjuntos de la abogacía y el trabajo de lobby.
- Para brindar apoyo a organizaciones necesitadas en términos de recolección de fondos, información, vínculos, pericia, etc.
- Para trabajar por la promoción y el aumento de la representación del pueblo maa en las estructuras gubernamentales, políticas y sociales relevantes.

Durante la interacción y consultas entre los maasai de Kenia y Tanzania, se discutieron muchos temas como el uso de la palabra maasai para diferentes negocios. Se compartieron ejemplos, p. ej., Hotel Maasai, Estudio Maasai, Campamento Maasai, Giras Turísticas Maasai, Jirafa Maasai, Parque Maasai, Tienda de Curiosidades Maasai, etc., etc. La lista era interminable y sin embargo los mismos maasai nunca tuvieron, ni tienen ahora, nada que ver con esas empresas. Generalmente los maasai no eran ni los dueños ni los beneficiarios de esos negocios. Aunque hay muchos otros grupos étnicos tanto en Kenia como en Tanzania, nunca se oye de ninguna empresa comercial con el nombre de Campamento Wanyaturu, Hotel Wakwere, Kikuyo, Chagga, etc.

Durante las consultas celebradas entre los maasai de Kenia y Tanzania también se discutió sobre cómo revivir algunos símbolos indígenas que eran usados por los maasai para identificar derechos de propiedad y se sugirió que los mismo símbolos podían ser adoptados y usados con objetivos de derechos de autor. El pueblo maa utilizaba tradicionalmente *"ormishire"* (yerra) y *"orponto"* (corte de parte de la oreja) para marcar la propiedad del ganado. Estos símbolos eran usados para establecer la relación entre la propiedad (el

ganado) y los propietarios (clanes maasai específicos). Se propuso que esos símbolos deberían ser revividos y usados para marcar y proteger diferentes cosas (artículos culturales como artesanías) que pertenecen al pueblo y la cultura maasai. Estos símbolos servirán otra vez como patente de cualquier cosa maasai. "Ormishire" es como la identidad de la propiedad de alguien, significando que si alguien puede identificar su propiedad, nadie puede reclamarla o usarla sin su consentimiento. ¿Por qué los maasai no pueden tener derecho a la patente de sus propios artículos tradicionales como vestimentas y ornamentos? Se propuso dar algunos pasos en forma colectiva para afirmar los derechos maasai a su base de recursos, identidad, lengua y cultura en su conjunto.

Uno de esos pasos que se decidieron dar es intentar preservar y promover la lengua maasai que todos consideran como el alma de la cultura y la identidad maasai, pero que está desapareciendo lentamente, especialmente entre los profesionales maasai que viven y trabajan fuera de sus comunidades indígenas.

La lengua es depositaria de la cultura y como tal es la esencia de la identidad propia. Sirve como factor unificador entre las diferentes agrupaciones maa tanto en Kenia como en Tanzania. Los participantes del Festival consideraron que si se pierde la lengua maa, los maasai, como comunidad, también perderán unidad, cultura, identidad y orgullo.

KENIA

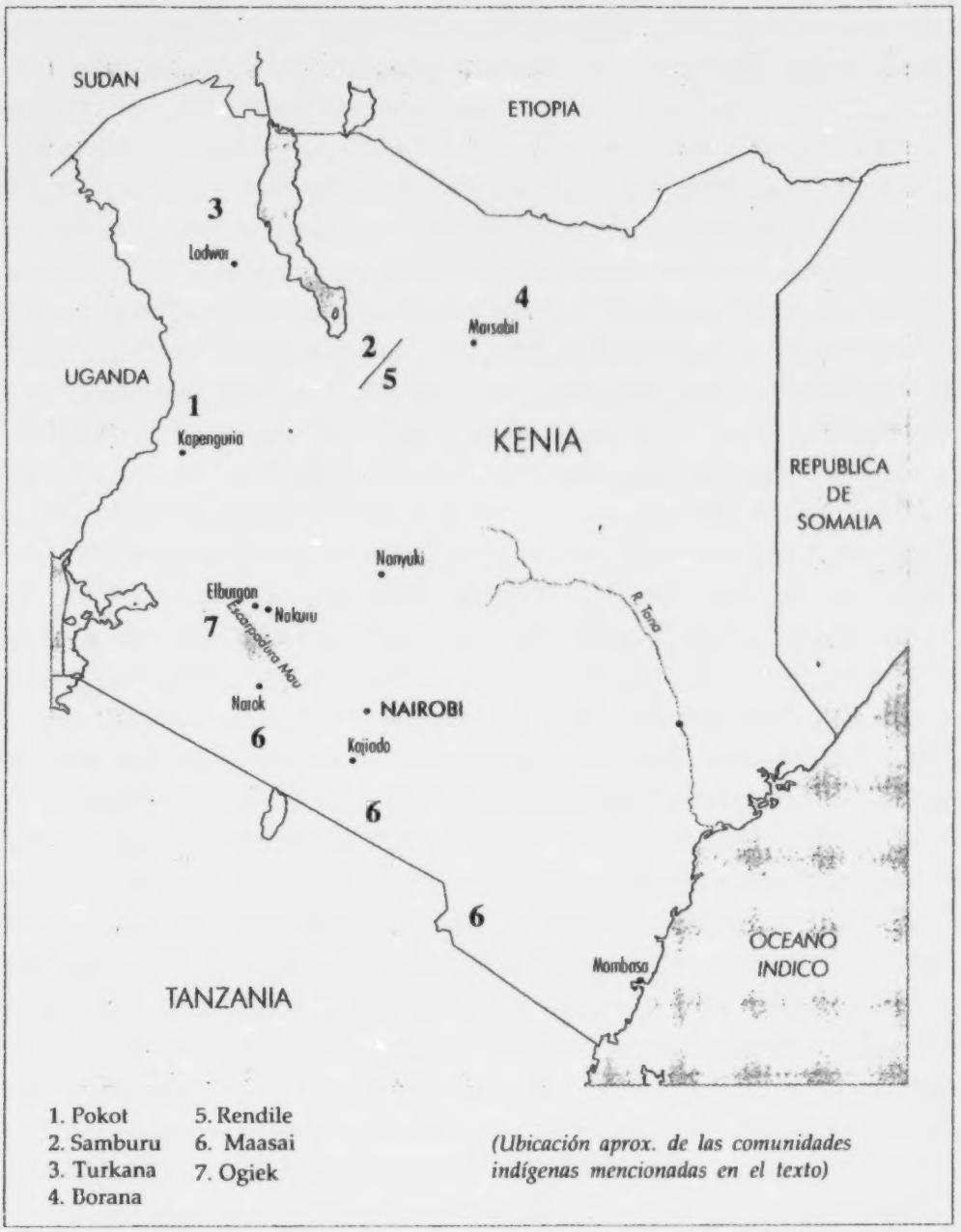
Entre los sucesos que tienen relevancia para la vida de los pueblos indígenas en Kenia en el año 2001 se encuentran los siguientes:

1. El proceso de reforma constitucional
2. El caso ogiek
3. Las reivindicaciones pokot por territorios perdidos
4. La creación del Consejo Pastor Maa
5. Enfrentamientos entre agricultores y pastores

El proceso de reforma constitucional

El proceso de reforma constitucional, que se había detenido hace un año, fue reiniciado a comienzos de 2001. La Iniciativa Ufungamano[1]

835



acordó en principio realizar un proceso común para la revisión de la constitución de Kenia. Este gran avance allanó el camino finalmente para la unión de los dos grupos de la Reforma de la Constitución de Kenia (KCRC). Los trece puntos que tenían que acordar los dos organismos rivales fueron endosados y el presidente de la KCRC aceptó juramentar junto con los comisionados de una sección transversal de las sociedades del país. Durante los varios meses siguientes, la KCRC realizó seminarios en busca de opiniones de expertos sobre una amplia

BEST COPY AVAILABLE

gama de tópicos, incluyendo tierra, gobernación y derechos culturales. Estas son las áreas donde los temas indígenas difieren de los de las sociedades dominantes.

El nombramiento de coordinadores de distrito estuvo plagado de controversias como consecuencia de reclamaciones de algunos distritos de que las personas nombradas para actuar como coordinadores en sus distritos no provenían originalmente del distrito y que deberían ser reemplazadas por una persona indígena del mismo distrito. La comisión aceptó los puntos de vista de la comunidad y acordó reemplazar a los coordinadores. Sin embargo, hasta fin de año los reemplazos todavía no se habían efectuado lo que perjudicó el proceso de revisión en los distritos porque las comunidades no estaban preparadas para presentar sus opiniones a la comisión durante su visita a los distritos. Kajiado, un distrito ocupado por los maasai, fue uno de los distritos afectados por este problema.

Aunque el proceso de reforma siguió su curso tal como estaba planeado, el año terminó y el parlamento fue clausurado por un receso de Navidad de tres meses sin haber aprobado la Ley de Reforma de la Constitución de Kenia (Enmienda) 2001, que hubiera introducido el proceso de reforma en la constitución. Se consideraba que la aprobación de esta Ley era importante porque protegería el proceso de reforma constitucional contra la manipulación política. Los partidos de oposición expresaron el temor de que el Presidente podría usar sus poderes para desmantelar la comisión si se consideraba que iba contra los intereses políticos del partido gobernante y sus aliados.

El proceso de reforma todavía no era compatible con la sección 47 de la constitución, lo que significa que todavía podía ser impugnado en una corte judicial. La sección 47 (2) establece que "Una Ley o Proyecto del parlamento para alterar la constitución no debe ser aprobada por la Asamblea nacional a menos que haya sido apoyada en la segunda y tercera lectura por los votos de no menos del 65% de todos los miembros de la Asamblea". Esto no se cumplió con respecto a la Ley de reforma.

Tal como está ahora la situación, los districtos electorales, la comisión nacional constituyente y la realización de referéndums no están previstos en la actual constitución. Esto ha dificultado al equipo de reforma constitucional captar la completa atención del público ya que existe temor de que se diluya a mitad de camino, como sucedió con otras comisiones. Sin embargo, la comisión todavía está funcionando y el temor persiste.

El caso ogiek

Durante el año pasado, el caso ogiek por los derechos a los territorios ancestrales continuó ocupando los titulares. La batalla legal es contra

837

el gobierno de Kenia sobre derechos al bosque Mau Oriental. El área ha sido declarada como área forestal protegida, lo que condujo a la expulsión de unos 5.000 ogiek quienes, desde entonces, quedaron sin hogar y sin medios de subsistencia.

Se dice que algunas de las áreas registradas son protegidas por los derechos territoriales y forrajeros consuetudinarios de los ogiek pero sin embargo, los ogiek son mantenidos fuera del área. Al mismo tiempo, no se ha realizado ningún esfuerzo para proteger el área contra una posible usurpación y explotación maderera. Al contrario, el gobierno ha adjudicado una parte del bosque a elementos externos para que la usen para otros propósitos. Los ogiek llevaron el asunto ante la justicia y la Alta Corte declaró una prohibición contra más adjudicaciones de tierra hasta que la disputa haya sido resuelta. Sin embargo, a pesar de esta prohibición, los ogiek han sufrido un continuo hostigamiento y amenazas de desalojo. Hacia fines de año, el caso fue rechazado por un tecnicismo pero los ogiek han apelado.

El año pasado los ogiek celebraron un festival cultural durante mediado de año que, entre otras ventajas, sirvió para cementar las relaciones entre los dispersos grupos ogiek y crear una unidad de propósito, particularmente sobre el tema de territorio.

Las elecciones especiales pokot y las reivindicaciones por territorios perdidos

Cuando en el año 2000, el representante pokot trató de defender los derechos de los pokot a sus tierras ancestrales, fue calificado por los medios de difusión mayoritarios como "enemigo nacional", "tribalista" e "incitador", un creador de "animosidad innecesaria". Fue acusado de dividir a los kenianos en líneas tribales y se les recordó que los kenianos eran libres de poseer tierra en cualquier parte del país. Una persona le aconsejó incluso abandonar la política porque sus desbordes eran rayanos al odio, etc. (*People*, febrero 3, 2000).

El fallecimiento del Honorable Lotondo, el miembro radical durante largo tiempo del parlamento, quien era muy reverenciado por los pokot condujo mediante una elección a su reemplazo por un representante igualmente radical, Samuel Moroto. La campaña atrajo mucha atención y el gobierno apoyó firmemente a un candidato que no era favorecido por la mayoría de los pokot. Se dijo que un alto funcionario gubernamental había visitado el área para hacer campaña por el candidato preferido del gobierno. Como la mayoría de los pueblos indígenas marginados de Kenia, los pokot siempre han apoyado al partido gobernante, KANU. Sin embargo, como otros pueblos, ellos también tienen problemas con el partido. Como cada vez es más

338

difícil manipular las elecciones en áreas controladas por la oposición, es un secreto a voces que el partido gobernante sigue manipuleando las elecciones en otras partes del país. La intención usual del partido es seleccionar candidatos que puedan ser útiles para el partido, aunque no necesariamente para el pueblo. El procedimiento, que está bastante extendido, resulta en la selección de líderes impopulares que pueden ser fácilmente manipulados por el partido debido a una serie de razones diversas.

Según dicen los pokot, lo mismo les iba a suceder a ellos. Cuando se dieron cuenta, elaboraron rápidamente criterios que un líder apropiado tenía que cumplir. De estos criterios, el más importante, y que puede ser valioso para otros pueblos indígenas en circunstancias similares, es que el candidato potencial tiene que demostrar lealtad total primero y fundamentalmente a los pokot y luego al partido, no al revés. El candidato que favorecía el gobierno tenía estos criterios invertidos lo que, conforme a los pokot, lo convertiría en un representante del gobierno y no de los pokot. Como el nuevo miembro del parlamento cumplía con los criterios de un buen líder, los pokot consideraron que finalmente lograron un triunfo.

Los pokot también han seguido abogando y haciendo campaña durante el año, y recientemente el gobierno les ha devuelto dos haciendas (Hacienda Mwisho y Hacienda Chepconia) que les habían sido usurpadas durante el período colonial. Sin embargo, a pesar de los logros recientes, los pokot todavía reivindican el resto de sus antiguas tierras ancestrales ante el gobierno de Kenia. La discusión actual se centra en una franja de 40 kilómetros cuadrados de tierra que fue usada para asentar forasteros. Una parte de la tierra está en Baringo, el distrito electoral del Presidente y ha sido unilateralmente rebautizada como "Pokot Este" por los pokot. Las reivindicaciones, así como los logros que obtuvieron los pokot hasta ahora sientan precedentes positivos para otros pueblos indígenas en circunstancias similares.

Como consecuencia de una afluencia de armas de fuego ilegales en la zona norte, los robos de ganado se han convertido en conflictos armados serios, que polarizan las relaciones entre los diversos grupos y acarrean inseguridad a toda la región. El gobierno ha prestado poca atención a estos conflictos, aparte de intentar –con poco éxito- desarmar a los residentes. Otras comunidades pastoras que ocupan la parte norte del país, los samburu, turkana, borana, rendille y otras están igualmente afectadas por el conflicto.

839

Enfrentamientos entre agricultores y pastores

Los enfrentamientos entre las comunidades pastoras y agricultoras en el Distrito del Río Tana, de la región costera, fueron tan severos durante el año pasado que ocuparon la primera plana. Los pastores horma y los agricultores pokomo se han enfrentado a causa de áreas de pastoreo que habían sido cultivadas. Los enfrentamientos resultaron en muertes de seres humanos y de ganado, el incendio de casas y destrucción de propiedad. Entre los muertos se encuentra policía. Como consecuencia de los enfrentamientos, el área se tornó tan insegura que las escuelas tuvieron que ser cerradas, lo que llevó a llamados para rearmar a guardias locales, pero hasta fin de año no se había implementado.

Tierras de pastoreo en el norte de Kenia son designadas como zonas de entrenamiento militar

Hace más de 20 años, el gobierno de Kenia designó las tierras ancestrales de los samburu y los maasai, en el norte de Kenia, como zonas de entrenamiento militar sin el conocimiento ni el consentimiento de los residentes. El ejército británico, el ejército keniano y luego los marinos de los EE.UU. siguen realizando maniobras militares, usando munición, morteros, bombas, granadas y artillería.

Después de los ejercicios, los ejércitos no realizan limpieza de la zona. Por consiguiente, estas tierras están sembradas de artefactos sin detonar que en muchas ocasiones han explotado, matando a más de 60 pastores, cuya mayoría eran niños. Miles de personas han sido heridas y la mayor parte quedaron lisiados de por vida. También murió una enorme cantidad de ganado.

En varias oportunidades, los residentes solicitaron al gobierno que cesara el entrenamiento militar en el área e iniciara una limpieza para evitar más muertes de seres humanos. Todos los intentos de lograr que los medios locales destacaran la grave situación de los pastores del área fueron infructuosos.

En agosto de 2000, OSIGILI, una organización indígena, organizó una conferencia nacional que reunió a las víctimas, el gobierno y el ejército para discutir el asunto y buscar una solución. El gobierno negó conocimiento de que hubiera muertos y heridos y acusó a la comunidad de fabricar mentiras. Además intimidó a los miembros de la comunidad para que no cooperaran con los mentirosos.

Finalmente, la organización comunitaria tuvo que llamar la atención de los medios de difusión extranjeros para hacer trascender el asunto y procurar una indemnización para las víctimas de esta vio-

840

lación de los derechos humanos. El asunto fue finalmente presentado ante la justicia y, temiendo más bochorno público, el ejército británico optó recientemente por arreglar el asunto extrajudicialmente. Todavía están pendientes otros casos similares mientras que el gobierno de Kenia sigue confabulando con los ejércitos extranjeros para continuar violando los derechos humanos de los pastores del norte.

Los maasai crean un Consejo

A comienzos de año, los maasai pudieron ver el inicio del Consejo Pastor Maa (MPC). La primera reunión planificada fue realizada una tarde, en Kenia, durante un taller para brindar aportes a la Estrategia Danesa para el apoyo a los pueblos indígenas. Después, el grupo se ha reunido aproximadamente todos los meses para deliberar sobre diversos temas. Después de acordar el nombre de la organización, su constitución y los artículos de la asociación, el organismo fue registrado como sociedad dedicada interinamente al trabajo en Kenia, pero con la intención de trabajar en conjunto con los maasai de Tanzania. Redactaron un memorando sobre la cuestión de la tierra para entregarlo al presidente y a la Comisión de Reforma Constitucional. El MPC, junto con los pastores norteños y los cazadores-recolectores ogiek, recibieron alguna asistencia financiera del proyecto de la OIT para pueblos indígenas a fin de facilitar la educación cívica para el proceso de revisión constitucional. El proyecto está ahora en marcha.

Entre otras actividades, el MPC invitó a conferenciantes sobre temas de actualidad de interés de la comunidad; elaboró un documento de posición que resume los intereses de todas las sub-secciones maasai (*iloshon*); coordinó el comercio de carne en las áreas maasai como forma de reducir la explotación de los intermediarios y elaboró una base de datos para todos los maasai con estudios. El MPC todavía está deliberando sobre una estructura apropiada que esté basada en la estructura indígena –todavía fuerte- pero que también se adapte a situaciones modernas.

Festival Cultural Maa

Como se describió previamente, el Festival Cultural Maa anual tuvo lugar en Nairobi, Kenia. Además de compartir aspectos especiales de su cultura, el festival también ayudó a reunir a las subcomunidades dispersas que están amenazadas por la asimilación, como los ilchamus de Baringo. También ayudó al restablecimiento de relaciones entre diversos grupos que no se conocían previamente. Lo más impor-

841

tante es que el festival ayudó a iniciar un proceso de mitigación de conflictos entre diferentes personas. Aunque los maasai otorgaron gran significación al festival, los medios kenianos sólo destacaron un incidente menor en que la hija de uno de los políticos se negó a saludar al rival político de su padre.

Nota

1 La iniciativa "Ufungamano" es una asociación civil - bajo la conducción del sector religioso de Kenia - que ha nombrado a un equipo de comisionados para realizar un proceso de consulta popular más amplia que aquella prevista por el gobierno dentro del proceso de reforma constitucional. (Nota del editor)

TANZANIA

En el año 2001 y 2002, los pueblos indígenas de Tanzania, p. ej., las comunidades cazadoras-recolectoras hadzabe y ndorobo, así como los pastores barbaig y maasai[1] siguieron experimentando diversos desafíos. Este artículo tiene la intención de ser una actualización de la situación de los pueblos indígenas de Tanzania durante el año 2001 y la primera mitad de 2002.

Los cazadores-recolectores hadzabe y ndorobo

Las comunidades indígenas cazadoras-recolectoras hadzabe y ndorobo siguen experimentando la marginación económica, política, social y cultural.

La liberalización económica provocó un aumento de la utilización de recursos naturales como la madera y otros productos forestales, quema de carbón, niveles mayores de caza deportiva o comercial y expansión de áreas para la agricultura comercial.

Todas estas formas de utilización de recursos tienen un impacto negativo sobre los medios de subsistencia de las comunidades indígenas cazadoras-recolectoras como los hadzabe y los ndorobo. Esas formas de uso de la tierra tuvieron como resultado la pérdida de

842

recursos que constituían la base vital de las comunidades cazadoras-recolectoras. En la implacable competencia sobre los recursos, las comunidades cazadoras perdieron aún más recursos tradicionales que son vitales para su supervivencia. Esto ha afectado negativamente a las comunidades cazadoras-recolectoras cuyos medios de subsistencia dependen de los recursos de la fauna, los frutos silvestres y la miel.

Los hadzabe continuaron perdiendo sus tierras ancestrales en áreas en torno a los lagos Manyara y Eyasi a manos de pequeños agricultores y la protección de la naturaleza. En forma similar, los ndorobo de Kiteto se han visto reducidos a áreas aún más pequeñas y remotas en las aldeas de Amei, Loolera, Kilimoto, Palango, Iltirkishi, Enkusero, Namelok, Napilukunya, Isinya, Kitwai y Nkapapa.

En el año 2001 y la primera parte de 2002 tanto los hadzabe como los ndorobo se vieron forzados a adquirir más granos para suplir sus dietas indígenas. Tradicionalmente, los recursos de la caza, sumados con la recolección de frutos silvestres, tubérculos, raíces y miel, constituían casi el 80% de la alimentación para ambos grupos. Ahora se está usando más y más grano para suplir las necesidades dietéticas. Se dice que en años recientes constituye el porcentaje cada vez más importante de la alimentación de las comunidades cazadoras-recolectoras de Tanzania.

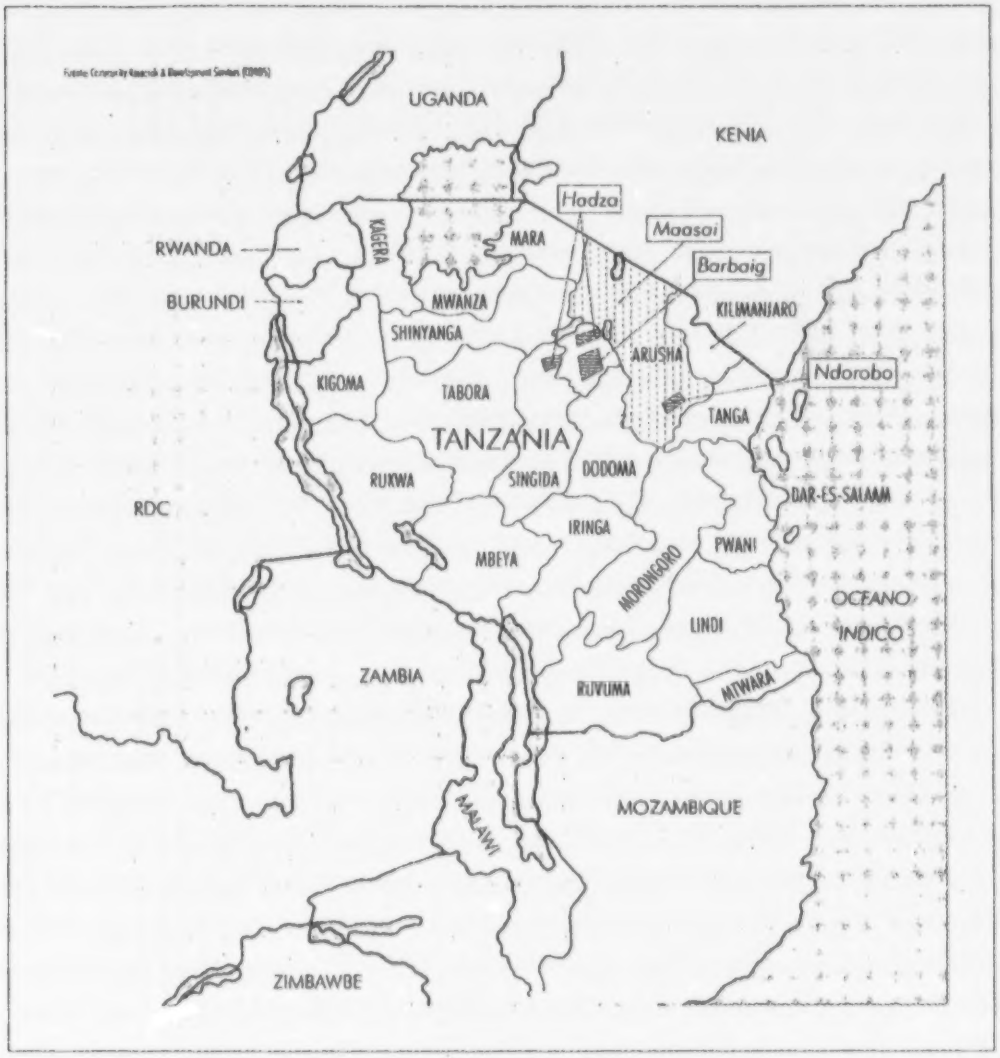
La inseguridad alimentaria es ahora un problema recurrente y el desplazamiento de las fuentes de subsistencia de las comunidades cazadoras-recolectoras hadza y ndorobo los obligan a depender de la ayuda alimenticia de emergencia de estación a estación.

La agricultura está ganando lentamente la aceptación de los ndorobo de Kiteto y está surgiendo como una forma de adaptación. Como estrategia de supervivencia, algunos cazadores también comenzaron a criar animales como gallinas y cabras. Tanto la agricultura como la cría de animales son asumidas por los cazadores-recolectores como formas de diversificar sus fuentes de ingreso y reducir su vulnerabilidad.

Las políticas de conservación dificultaron aún más el acceso de las comunidades cazadoras-recolectoras a sus medios de subsistencia. La caza y la recolección de frutos silvestres que tradicionalmente aseguraban su subsistencia están cada vez más restringidas, creando así más incertidumbre y una perpetua inseguridad alimentaria.

La caza de subsistencia está todavía prohibida e ilegalizada en Tanzania. En los mismo territorios, la caza deportiva no sólo es permitida sino que también es alentada por el gobierno y es considerada como una buena fuente de ingresos. La prohibición de la caza de subsistencia ha desplazado a los indígenas hadzabe y ndorobo, haciéndolos más vulnerables e incapaces de enfrentar la incertidumbre ambiental.

843



Las comunidades pastoras barbaig y maasai

La situación del grupo de pastores indígenas de Datoga que comprende a los buradiga, bisiyeda, gisamjanga, bajuta, gidang'odiga, biyeanjida, darorajega y barbaig ha continuado deteriorándose, con pérdidas crecientes de tierra y ganado por parte de la mayoría de las comunidades barbaig que viven en Arusha o Singida. Esto desató más migraciones de los barbaig a Dodoma, Morogoro, Shinyanga, Iringa, Rukwa, Mbeya y Ruvuma.

En forma similar, la situación de los pastores maasai[2] es crítica. El porcentaje de maasai en sus cuatro distritos tradicionales, Monduli, Simanjiro, Kiteto y Ngorongoro continuó decreciendo debido a la inmigración de comunidades agricultoras acelerada por la liberalización de la economía y del mercado. Durante los dos últimos años, se

BEST COPY AVAILABLE

841

observó que más maasai se trasladaron a Dodoma, Tanga, Morogoro Iringa y Mbeya.

El contexto nacional

Los pueblos indígenas viven en un entorno que es influido por los procesos de desarrollo nacionales y regionales. Los siguientes son algunos de los acontecimientos más importantes del país que han tenido una influencia directa o indirecta sobre los medios de subsistencia de los pueblos indígenas de Tanzania.

Durante los últimos dos años, Tanzania continuó implementando programas de ajuste estructural (SAPs). Estos programas han tenido afectado a todos los otros sectores sociales, políticos, económicos y gubernamentales. El gobierno formuló recientemente nuevas políticas para todos los sectores bajo las directivas de los programas de ajuste estructural y requisitos para la reforma del sector público.

Aunque el resto de los tanzanianos ha sentido el impacto de los programas de ajuste estructural y otras políticas de liberalización, los segmentos más vulnerables de la población fueron los que tuvieron que soportar más la carga de esas políticas. Las comunidades indígenas se encuentran entre los grupos más afectados. Entre los efectos más notables de los programas de ajuste estructural se encuentran una mayor marginación y crecientes niveles de pobreza.

Política gubernamental sobre la ganadería

A fines de 2000, el gobierno de Tanzania formó un nuevo Ministerio de Aguas y Desarrollo de la Ganadería (MoWLD). A comienzos de 2001, el nuevo ministerio comenzó a discutir cómo desarrollar el sector ganadero.

Aunque todavía están en sus primeras etapas, la dirección que están tomando las discusiones políticas es hacia el desarrollo y establecimiento de un sistema ganadero similar al que tuvo lugar en Botswana, o el "modelo de Botswana". Aunque el objetivo de este artículo no es discutir temas políticos generales, es importante establecer que es necesario que cualquier política que se adopte respete el rol de las comunidades pastoras indígenas en cuanto al manejo de sus derechos de propiedad a los recursos. La nueva orientación política se concentra mayormente en la ganadería comercial y en proveer a los habitantes urbanos los productos ganaderos más necesarios. Las necesidades de subsistencia de las comunidades pastoras así como la seguridad de sus regímenes de tenencia de la tierra no figuran como áreas de prioridad política.

845

El concepto de ganadería no es completamente nuevo para las comunidades indígenas pastoras de Tanzania, especialmente para los maasai. Aunque tienen un concepto particular de la ganadería que consiste en que una tribu o un clan posee zonas de tierra en común para poder cuidar su ganado y manejar sus recursos pastores. Este modelo no disponía de un uso y una propiedad exclusiva sino que era un uso conjunto de los recursos y una propiedad común.

El proyecto Rural Maasai[3] fue diseñado en parte como un paso hacia la privatización de la propiedad de la tierra; un sistema que tenía la intención de detener la invasión masiva de agricultores en áreas ganaderas. Ese programa fracasó parcialmente debido a que no adoptó el modelo comunal de tenencia de la tierra, y no garantizó la seguridad de la tenencia de la tierra en posteridad.

Mientras que el recién promulgado tipo de ganadería quiere la privatización de la tierra y otros recursos ganaderos, los pastores indígenas quieren la propiedad comunitaria y esto tiene que ser respetado en cualquier política nueva que se elabore. Es necesario aprender de experiencias previas con la ganadería en los distritos de Kiteto, Monduli y Ngorongoro Monduli, así como también de la experiencia de Kenia. Se necesita sabiduría y precaución antes de decidir cuál tipo de sistema de ganadería adoptar.

La privatización de los servicios veterinarios provocó el alza del precio de los medicamentos veterinarios hasta niveles fuera del alcance de la mayoría de los pastores. La falta de infraestructura y facilidades de comercialización han dificultado a los ganaderos acceder a los medicamentos. Los distritos de Simanjiro, Kiteto y Hanang experimentan pérdidas de ganado debido a diferentes enfermedades trasmitidas por ácaros.

Política impositiva

En el distrito de Kiteto se introdujo un sistema impositivo discriminatorio en 2002. Tanto los agricultores como los pastores han estado pagando impuestos a la explotación y a la venta. El consejo de distrito, en un intento de ampliar sus ingresos, introdujo un impuesto a la producción para los pastores maasai que viven en el distrito de Kiteto. Esta diferencia de normas impositivas contra los pastores es discriminatoria pues los agricultores del mismo distrito no pagan ningún impuesto a la producción.

Los pastores organizaron manifestaciones, argumentando que ya pagan impuestos a la explotación (Tshs 2.500 por persona), impuesto a las ventas (Tshs 3.500 por animal vendido, el vendedor paga Tshs 500 y el comprador Tshs 3.000), sin recibir ningún servicio a cambio. Los pastores de Kiteto enviaron una petición especial a la dirección del distrito, recomendando vehementemente que la política impo-

846

sitiva debería ser estandarizada en todo el distrito aplicándose las mismas reglas a todas las áreas y a todos los grupos económicos del distrito. Los pastores argumentaron además que debería haber una estandarización con relación a los principios utilizados en la recaudación de impuestos de los agricultores y los pastores. Si hay un impuesto por cabeza para los pastores debería haber un impuesto a la producción para los agricultores o algún otro sistema basado en la equidad y de acuerdo con el derecho constitucional de igualdad.

Temas emergentes, análisis y discusión

Reducción de la base de recursos y conflictos

Las comunidades indígenas de Tanzania siguen experimentando la reducción de su base de recursos porque los territorios tradicionales continuaron siendo sometidos a formas de uso de la tierra diferentes a las formas indígenas. Los hadzabe y los ndorobo están perdiendo continuamente tierra a manos de los pequeños agricultores, la protección ambiental y la ganadería. En forma similar, los pastores barbaig y maasai pierden continuamente recursos ganaderos debido a otros usos de la tierra, creando una seria escasez de tierra, que lleva a conflictos perpetuos basados en los recursos. Los conflictos entre la fauna y las actividades humanas, la ganadería y la agricultura, la caza de subsistencia y deportiva han aumentado en frecuencia e intensidad.

Representación inadecuada

En el ámbito político, las cuatro comunidades indígenas de Tanzania han experimentado pérdida de sus territorios indígenas y han sido empujadas a otras áreas. Ahora viven en más de 15 distritos administrativos, donde constituyen un pequeño porcentaje de la población.

A comienzos de 2002, la región de Arusha, la región tradicional de los pueblos indígenas de Tanzania, fue dividida en dos: las regiones de Arusha y Manyara[4]. Por consiguiente, las comunidades pastoras y cazadoras-recolectoras ahora están divididas en dos regiones administrativas separadas. Esto no hará más que debilitarlas políticamente aún más y serán cada vez más minoritarias en cada región, sin una adecuada representación política en la región o en cualquiera de los diez distritos.

El problema de falta de representación de los pueblos indígenas es obvio, tanto para las comunidades cazadoras-recolectoras como para las pastoras, y esta representación inadecuada junto con una coordinación inadecuada de los temas indígenas privó a las comuni-

847

dades indígenas de disponer de una voz unida. La Constitución de Tanzania, artículo número 21(2) establece que "todo ciudadano tiene el derecho y la libertad de participar plenamente en el proceso que conduce a la decisión sobre temas que lo afectan a él, a su bienestar o el de la nación". La falta de representación política, legal y gubernamental es obvia en el ámbito local, de distrito, regional y nacional.

Derechos culturales

Con los años, Tanzania ha hecho énfasis en una política de unidad nacional, de idioma nacional (swahili), de identidad nacional y de consenso nacional. Este proceso ha reprimido la diversidad cultural, lo que ha acentuado el debilitamiento de los diferentes valores culturales. Esta es una realidad para todas las comunidades indígenas en Tanzania.

Los cambios en las pautas de utilización de recursos han afectado los estilos de vida de los pueblos indígenas. La enajenación de sitios sagrados como *Endoinyo oo irmoruak* (la colina de los ancianos) de los maasai de Kenia y Tanzania representa una clara negación de los derechos culturales básicos de los pueblos indígenas porque las ceremonias religiosas y las prácticas espirituales nutren el sistema de valores de toda sociedad.

El sistema escolar que estipula que el suahili y el inglés son las únicas lenguas de instrucción margina, lenta pero seguramente, a las lenguas indígenas. Frecuentemente los niños de las comunidades indígenas son desalentados a usar sus propias lenguas. Los programas escolares no incorporan ninguna experiencia pastora, cazadora y recolectora en lo que se enseña en las escuelas, convirtiendo al sistema escolar en uno de los métodos utilizados para eliminar las lenguas y prácticas minoritarias.

Notas

1 El análisis de otros grupos de Tanzania que pueden alegar la identidad de pueblos indígenas está más allá del ámbito de este artículo.

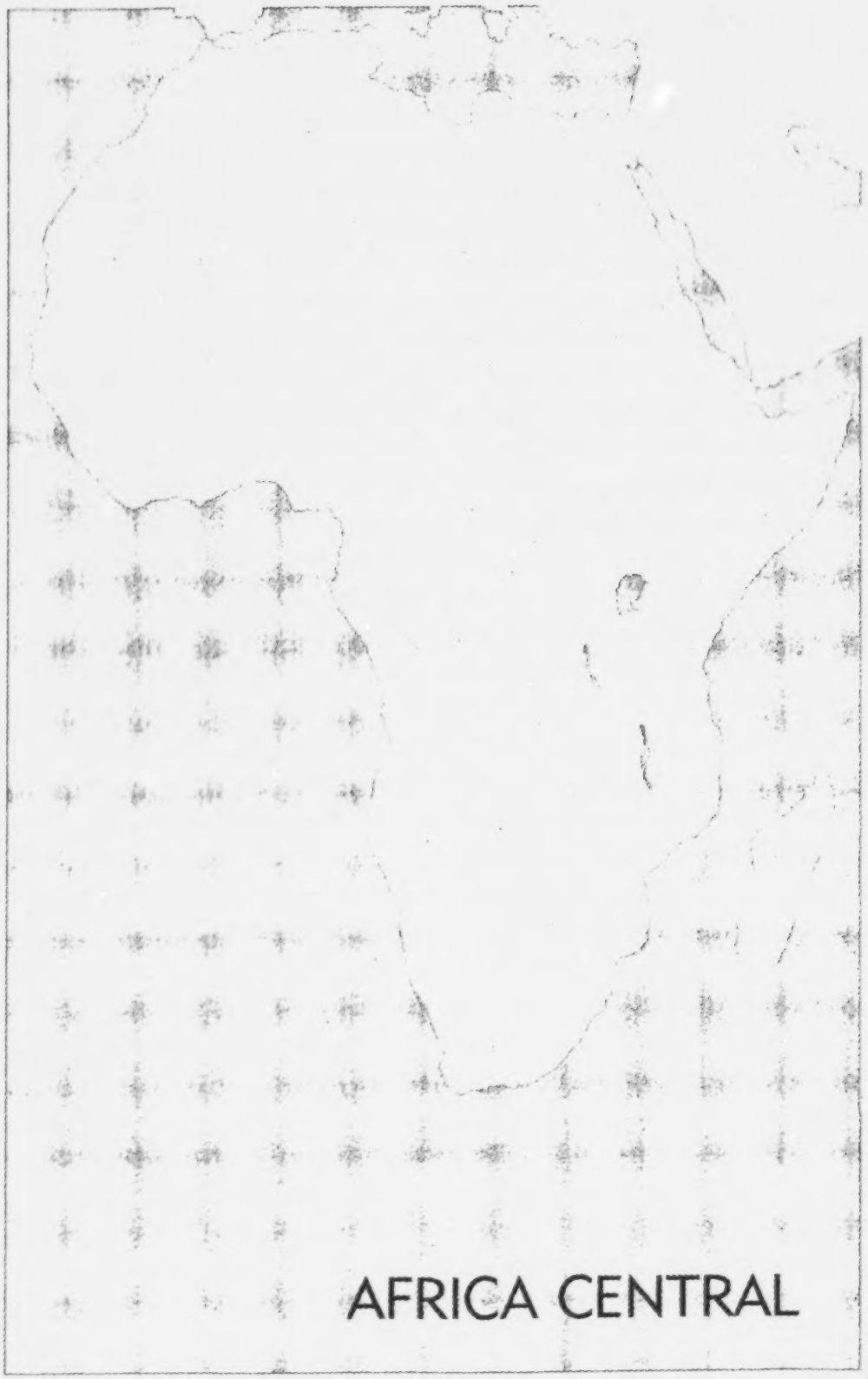
2 Aunque los maasai se encuentran tanto en Kenia como en Tanzania, esta sección trata solamente del lado tanzaniano de la frontera.

3 El proyecto maasai de manejo ganadero y rural fue un proyecto de diez años, de US$ 10 millones, iniciado en 1969; financiado por USAID y administrado por el gobierno de Tanzania (Ministerio de Agricultura). El proyecto estaba concebido para aumentar la producción ganadera y transformar a los pastores maasai en participantes de la economía nacional a través del aumento de la comercialización de su ganado.

848

4 La región de Arusha está compuesta por los distritos de Arusha, Aru-meru, Monduli, Karatu y Ngorongoro y la región de Manyara, por los distritos de Mbulu, Hanang, Babati, Simanjiro y Kiteto.

396 849



BEST COPY AVAILABLE

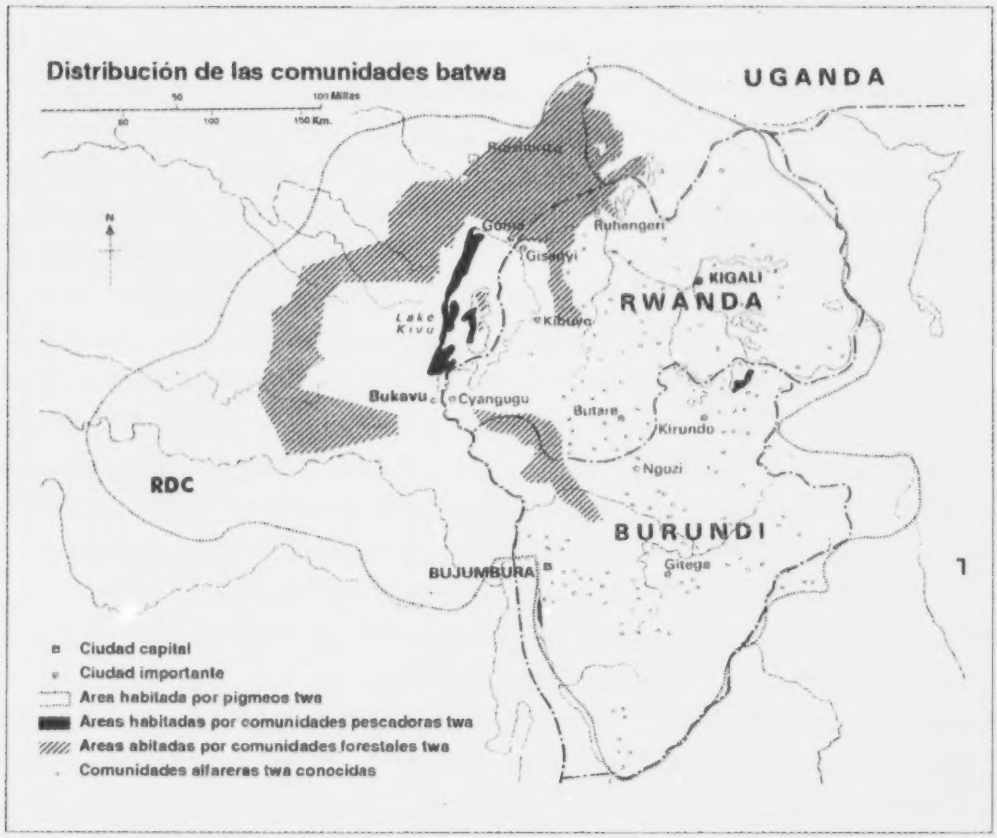
LA REGION DE LOS GRANDES LAGOS: LA ACTUALIDAD POLITICA

Durante 2001 la inestabilidad política y los conflictos armados en la República Democrática del Congo (RDC) siguieron afectando a los países vecinos, Ruanda, Burundi y Uganda. El gobierno de Kinshasa, liderado por Joseph Kabila (el hijo de Laurent Kabila quien fue asesinado en enero de 2000), respaldado por tropas de Angola, Namibia y Zimbabwe, está luchando contra movimientos rebeldes que controlan grandes partes del norte y este del país, el área donde vive la mayoría de los indígenas "pigmeos" de la RDC.

Los movimientos rebeldes están respaldados por Ruanda y Uganda, en un intento de derrotar a los disidentes e insurgentes que operan desde la RDC –disidentes que el gobierno de Kinshasa es incapaz o no está dispuesto a desarmar, o que quizá incluso apoya activamente. En el caso de Ruanda estos disidentes son efectivos de Interahamwe y elementos del ex ejército de Ruanda (ex FAR), perpetradores del genocidio de 1994, quienes continúan realizando ataques a través de la frontera; el ataque más reciente contra las provincias del noroeste de Ruanda ocurrió en mayo y junio de 2001. Uganda está tratando de detener las actividades del Frente Aliado Democrático y el Ejército Nacional para la Liberación de Uganda, que están basados en el nordeste de la RDC. Además, la RDC provee una plaza fuerte para dos movimientos rebeldes que operan contra el gobierno de Burundi, la Fuerza por la Defensa de la Democracia (FDD) y la Fuerza de Liberación Nacional (FNL). La continua existencia de estos elementos armados es la razón de por qué los gobiernos vecinos toman medidas de contrainsurgencia y mantienen la ocupación foránea de la RDC. Los efectos de los conflictos sobre las poblaciones locales son devastadores. El Comité Internacional de Rescate estima que 1,6 millones de personas han muerto en DRC como resultado de la violencia, enfermedad y hambre. Dos millones de personas están desplazadas; la desnutrición y la mortalidad infantil se han incrementado enormemente y se considera que 16 millones no tienen seguridad alimentaria.

Sin embargo, durante 2001 hubo signos alentadores de progreso en dirección a la paz en la RDC pues comenzó a tomar forma el diálogo intercongolés, facilitado por el ex presidente de Botswana, Ketumile Masire. El diálogo forma parte del acuerdo de paz firmado en Lusaka en 1999 entre todas las partes en conflicto y apunta a reunir a representantes del gobierno, la oposición política, los grupos de oposición armada y la sociedad civil, para trazar un futuro para la RDC. Durante 2001, las tropas extranjeras se retiraron de sus posiciones de primera línea, Kinshasa expresó que estaba dispuesta a entre-

851



gar a Ruanda a 6.000 milicianos Interahamwe y ex FAR y que ya no permitiría que los insurgentes lanzaran ataques desde la RDC, y se celebraron reuniones entre jefes de estado de los países involucrados en el conflicto y líderes de los grupos rebeldes. Los cinco grupos principales que debían participar en el diálogo intercongolés –el gobierno, la oposición, los movimientos rebeldes respaldados por Uganda y Ruanda, y la sociedad civil- eligieron sus representantes. Sin embargo, disputas sobre la participación de grupos que no habían firmado el acuerdo de Lusaka, como grupos separados de los movimientos rebeldes, los Banyamulenge (un grupo minoritario de tutsi congoleños) y los Mayi-Mayi (una asociación imprecisa de grupos armados opuesta a las tropas extranjeras en la RDC), significaron que la primera Conferencia del diálogo inter-congolés tuvo que ser pospuesta hasta principios de 2002.

En Burundi, ocho años de conflictos violentos entre los grupos étnicos hutu y tutsi han devastado al país, causando la muerte de unas 200.000 personas, desplazamientos masivos de población y un severo deterioro de la infraestructura de la salud, agua y servicios sanitarios. Un millón de los 6,7 millones habitantes de Burundi (cifras de 1999) todavía dependen de la ayuda humanitaria, 432.000 personas viven en asentamientos de desplazamiento interno con agudas

BEST COPY AVAILABLE

necesidades humanitarias y 200.000 personas desplazadas internamente viven en condiciones *ad hoc*. Al menos otras 380.000 personas están refugiadas en Tanzania. Un informe de la FAO confirmó que el pueblo indígena twa de Burundi es el grupo más empobrecido de Burundi. La mayoría de los twa carecen de acceso a tierra cultivable, y las familias que tienen tierras están atrapadas en un círculo vicioso, viéndose forzadas a comer las semillas que les dieron agencias como la FAO, quedándoles pocas semillas para plantar. Como subsisten con un promedio de 50 centavos de dólar por día, la mayoría de las familias twa no puede acceder a la educación, servicios de salud o vestimentas para sus hijos.

Como en la RDC, existe alguna esperanza de que la paz pueda llegar a Burundi. El proceso de paz, facilitado por el ex presidente Sudáfricano Nelson Mandela, tuvo como resultado finalmente la investidura, el 1 de noviembre de 2001, de un gobierno transitorio de poder compartido entre exiliados retornados hutu y los tutsi. Los primeros 18 meses de la Presidencia estarán en manos de Pierre Buyoya, el previo presidente (tutsi), con un vicepresidente hutu. Después de 18 meses, esto se revertirá y un hutu será presidente con un vicepresidente tutsi. Los tutsi tienen 12 de las carteras del gobierno y los hutu 14. Sin embargo, todavía no hay un alto el fuego y los grupos rebeldes FDD y FNL siguen lanzando ataques armados contra Burundi desde la RDC. La paz en la RDC puede empeorar paradójicamente la situación en Burundi, ya que el desarme de los rebeldes de Burundi con base en la RDC puede forzar a estas fuerzas antigubernamentales a infiltrarse otra vez en Burundi para evitar la desmovilización.

RUANDA

Durante el genocidio de 1994, unos 800.000 tutsi y hutu moderados, alrededor de un 14% de la población, fueron muertos por grupos extremistas hutu, incluyendo al Interahamwe y ex FAR (ver más arriba). El hecho de que el tercer grupo étnico de Ruanda, los marginados y empobrecidos twa, también sufrieron el genocidio es mucho menos conocido. En una entrevista con la Agencia Noticiosa Hirondelle de Ruanda, Kalimba Zéphryn, Director de la ONG twa CAURWA (Communauté des Autochtones Rwandais –Comunidad de los Autóctonos Ruandeses), declaró que quedan unos 20.000 twa en Ruanda de una cifra estimada en 30.000 antes del genocidio[1]:

853

Tuvimos 10.000 muertos batwa en el genocidio. No fueron matados por batwa sino por hutu y tutsi. [Los batwa] deberían ser considerados como sobrevivientes del genocidio. Hasta la fecha el gobierno de Ruanda no ha tomado ninguna acción para ayudar a la comunidad batwa.

El gobierno de Ruanda nunca reconoció oficialmente las pérdidas twa durante el genocidio y no los cuenta entre los "sobrevivientes del genocidio". Los "sobrevivientes del genocidio" pueden recibir fondos gubernamentales establecidos para asistir específicamente a esta categoría de personas.

El hecho que los twa no participaron en la política de genocidio llevó a algunos comentadores a sugerir que tienen un rol especial como testigos independientes en el sistema tradicional comunitario de justicia, basado en las así llamadas cortes *gacaca*, establecidas por el gobierno para procesar a las 120.000 personas que están en las superpobladas cárceles de Ruanda y que tienen cargos en su contra relacionados con el genocidio. Sin embargo, los twa están muy preocupados por el proceso gacaca, y temen que como grupo marginado, serán vulnerables a ser chivos expiatorios y a ser acusados falsamente. También prevén una falta de testigos twa confiables para testimoniar en los juicios de personas twa, debido a que su comunidad es tan pequeña. Aunque los twa dicen que a pesar de los riesgos que corren apoyarán a las gacaca, relatando lo que han visto, también expresan temores de que si un régimen hutu alguna vez llega a reemplazar al actual gobierno dirigido por los tutsi, serán sumamente vulnerables a las represalias. En octubre de 2001 fueron elegidos unos 300.000 jueces gacaca (*inyangamugayo*) por la población local a nivel de célula, sector, distrito y provincia en 11.000 jurisdicciones gacaca. Un puñado de twa fue elegido al nivel más bajo (célula). Aunque la cantidad es muy pequeña, este es un signo alentador de que los twa están comenzado a ser incluidos en los procesos de la sociedad civil de Ruanda.

CAURWA estableció contactos de alto nivel con los Ministerios de Administración Local y Asuntos Sociales, Finanzas, Género y Promoción de las Mujeres, Justicia, Agricultura, Tierra y Medio Ambiente, Interior y Seguridad, la Oficina del Primer Ministro y la Comisión Nacional de Unidad y Reconciliación (URC). En agosto de 2001 CAURWA organizó un seminario de 4 días sobre derechos humanos y derechos de las minorías, justicia participatoria (gacaca) y unidad y reconciliación. El seminario reunió a representantes comunitarios twa de dos provincias, personal de las organizaciones twa de Ruanda y representantes de la Comisión de Derechos Humanos de Ruanda, la URC y la Suprema Corte. Estos contactos y la creciente cobertura de los temas twa en la prensa, TV y radio, están contribuyendo a

aumentar la toma de conciencia entre el público y los que toman las decisiones sobre los temas twa y la necesidad de acción. Por ejemplo, en octubre de 2001, la asamblea transitoria de Ruanda aprobó una ley antidiscriminatoria contra cualquier persona que practique la discriminación y segregación en el país. En un comentario sobre la ley, Vincent Biruta, Vocero del Parlamento, declaró que la ley "brinda un marco flexible que hace posible y legal implementar la discriminación positiva a favor de grupos vulnerables como los batwa, los discapacitados y las niñas".

Los contactos de CAURWA con URC son promisorios. La URC es el único organismo gubernamental que ha reconocido la situación marginal de los twa en sus políticas oficiales y programas. Ahora tiene una línea presupuestaria especial para apoyo de las comunidades twa. CAURWA ha establecido un sistema de personas de contacto twa o *"antennes"* en seis de las 12 provincias de Ruanda para ayudar a las comunidades twa a vincularse más efectivamente con las autoridades locales. Como parte de su trabajo, las "antenas" de CAURWA están sensibilizando a los representantes de la URC en cada provincia sobre las necesidades twa, con resultados positivos en algunas áreas.

La presencia de las antenas y el continuo trabajo de abogacía de CAURWA con las autoridades locales en más de 40 distritos en 8 provincias han ayudado a las comunidades twa a obtener tierra de cultivo y arcilla para la alfarería, reclamar tierra de vecinos que se han apropiado de ella y mejorar su vivienda. Este trabajo de capacitación a nivel comunitario fue reforzado durante 2001 con capacitación relacionada con la gestión y la dirección, organizada por el nuevo programa de CAURWA para los representantes comunitarios y el personal de organizaciones twa. Los últimos están brindando capacitación y aportes a 30 comunidades twa (762 familias) en 5 provincias para cultivar, criar animales domésticos y actividades no agrícolas como fabricación de tejas, ladrillos y costura. Algunas de las comunidades han establecido cuentas bancarias y están usando los ingresos recientemente obtenidos para pagar la escolaridad de sus hijos o para integrarse a programas de seguros de salud locales. En diciembre, CAURWA comenzó un proyecto para aumentar los ingresos de los twa provenientes de la alfarería, mejorando la producción, desarrollando la capacidad comercial y creando una empresa alfarera twa basada en los principios del comercio justo.

Las nuevas leyes promulgadas en 2001, que requieren el nuevo registro de todas las ONGs de Ruanda, impulsaron a CAURWA a comenzar a realizar discusiones con sus organizaciones miembros sobre su estructura futura. Para cumplir con los requisitos de registro, decidieron que CAURWA se convertiría en una ONG

de registro, decidieron que CAURWA se convertiría en una ONG independiente y ya no sería más un colectivo de organizaciones twa. Se espera que este proceso esté completo a comienzos de 2002. CAURWA mantendrá relaciones con las otras organizaciones twa a través de acuerdos de asociación y seguirá ofreciéndoles capacitación y otro tipo de ayuda.

Los próximos años brindarán importantes oportunidades de abogacía para los twa cuando el gobierno de Ruanda desarrolle e implemente su ambicioso programa de reformas. Entre éstas están el proceso de gacaca y la URC, así como la redacción de una nüeva constitución, reforma de leyes rurales, descentralización de la administración gubernamental e implementación de una estrategia de reducción de la pobreza (PRSP). Las organizaciones twa han comenzado a trabajar sobre estos temas. Por ejemplo, AIMPO, la Organización Africana de Pueblos Indígenas y Minoritarios, está documentando asuntos relativos a la tierra en cuatro comunidades twa como parte de su abogacía para mejorar el acceso twa a la tierra y también está apoyando el desarrollo de comunidades twa en torno al Parque Nacional Volcano. La ADBR, (*Association pour le Développement Globale des Batwa du Rwanda* - Asociación para el Desarrollo Global de los Batwa de Ruanda), continúa con su programa de ayuda legal para prisioneros twa.

En septiembre de 2001, CAURWA, en colaboración con el Proyecto para los Pueblos de los Bosques del Reino Unido, IWGIA y la Sociedad Sueca para la Conservación de la Naturaleza y financiada por el Fondo Comunitario del Reino Unido, fue anfitriona de una conferencia regional para promover el diálogo entre pueblos indígenas y organismos conservacionistas. El objetivo era analizar por qué los nuevos principios de conservación no están funcionando e identificar medidas que resulten en prácticas de protección medioambiental más justas y sostenibles. La conferencia reunió a representantes de comunidades indígenas afectadas por las áreas protegidas, y organizaciones de ayuda que trabajan con los pueblos indígenas en Africa. Los representantes indígenas presentaron diez casos de estudio de 7 países[2].

856

REPUBLICA DEMOCRATICA DEL CONGO (RDC)

El actual conflicto en la RDC ha causado inmensas dificultades para los pigmeos de la región de Kivu en el este de la RDC. Sus aldeas han sido quemadas, 150 personas han sido matadas, cientos han sido desplazados de sus hogares y muchos son forzados a actuar como guías para los grupos armados que tratan de ubicar a sus oponentes en los bosques. A pesar de la inseguridad y las dificultades causadas por el actual conflicto en la RDC, las organizaciones de apoyo pigmeas siguieron manteniendo contactos con las comunidades en el este y norte del país.

AAPDMAC (*Action d'Appui pour la Protection des Droits des Minorités en Afrique Centrale* –Acción de Apoyo para la Protección de los Derechos de las Minorías en Africa Central), una ONG de ayuda a los pigmeos con sede en Bukavu, investigó la situación de los pigmeos mbuti en el norte de Kivu y las franjas meridionales del bosque Ituri, particularmente en conexión con las actividades de una compañía maderera tailandesa, DAR-Forest, que ha sido denunciada por comunidades pigmeas locales. (El movimiento Mayi-Mayi secuestró más tarde a 26 trabajadores de la compañía; este acontecimiento tuvo cobertura noticiera internacional). El estudio también investigó las actividades de educación y alfabetización que diferentes grupos eclesiásticos realizan en comunidades pigmeas, para ver cuáles enfoques son más apropiados para las necesidades pigmeas.

AAPDMAC organizó un taller para representantes de comunidades twa que viven alrededor del Parque Nacional Kahuzi-Biega, en el sur de Kivu, para que pudieran comenzar a desarrollar una plataforma común para presionar a las autoridades de conservación del Parque para que traten la crítica falta de tierras y posibilidades de subsistencia de los twa después de su forzada expulsión del parque en los años 70 y 80[3].

Ahora existen unas 10 organizaciones de ayuda pigmeas en Kivu. Muchas de estas están preocupadas sobre las comunidades twa afectadas por el parque Kahuzi-Biega, y es posible que elaboren una estrategia coordinada para tratar este tema en colaboración.

Durante 2001, PIDP (Programme pour l'Intégration et le Développement des Pygmées du Kivu –Programa para la Integración y el Desarrollo de los Pigmeos de Kivu) comenzó la publicación de un boletín trimestral, *Bambuti*, que informa sobre sus actividades en la región. PIDP ha comenzado un proyecto de capacitación para comunidades pigmeas para mejorar la producción de alfarería y sigue apoyando a dos comunidades twa en el norte y sur de Kivu con aportes agrícolas (herramientas, semillas, etc.) y capacitación en mé-

857

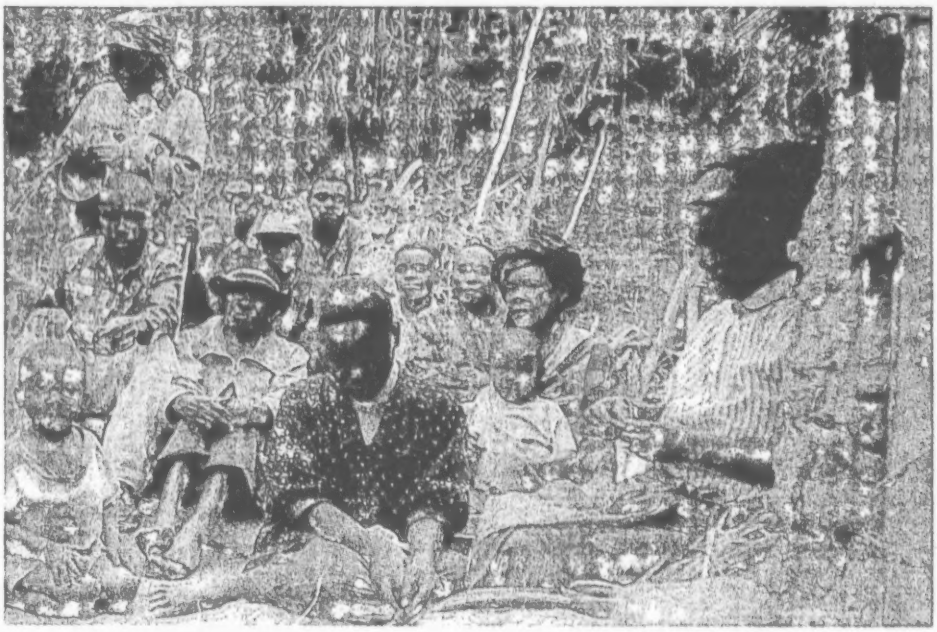
todos de cultivo. El proyecto ha sido reorientado para trabajar con grupos de mujeres twa, quienes son más receptivas a la capacitación y realización de actividades agrícolas. El programa de alfabetización de PIDP ha sido reactivado; 53 pigmeos pueden ahora leer y escribir. El aumento de la alfabetización de las comunidades pigmeas es importante para reducir la cantidad de transacciones fraudulentas de tierra debido a la incapacidad de los pigmeos de leer el contenido de los documentos. Como parte de su ayuda a la educación pigmea, PIDP financió a un estudiante twa de Walikale para que hiciera estudios superiores en desarrollo rural en Bukavu. PIDP celebró su "semana pigmea" anual en agosto de 2001, para aumentar la conciencia sobre los derechos pigmeos y la cultura a través de disertaciones públicas y debates sobre los instrumentos internacionales de derechos humanos, danzas pigmeas y exhibiciones artesanales, partidos de fútbol y discusiones sobre el trabajo de PIDP. Como parte de su trabajo sobre derechos humanos, PIDP está capacitando a animadores para trabajar con comunidades sobre temas legales y produce un programa de radio semanal de media hora.

El bajo estatus social de las comunidades pigmeas a los ojos de sus vecinos bantúes significa que solamente pueden garantizar sus derechos sobre tierras y recursos a través de los sistemas de tenencia consuetudinarios y que los derechos obtenidos pueden ser también fácilmente perdidos. Por ejemplo, en la región de Kivu de la RDC, los jefes locales o *mwami* tienen el control sobre la adjudicación de tierras a cambio de pagos al mwami, quien confiere derechos de uso ilimitados y perpetuos (*kalinzi*) o derechos de uso temporarios (*bwassa*). Se ha informado de varios casos de comunidades twa que han pagado kalinzi por el uso de tierra de cultivo y han sido luego expulsados de sus tierras por otros individuos más poderosos. En 2001 PIDP asistió a familias twa a presentar uno de esos casos a la corte de apelaciones de Bukavu en el sur de Kivu. En base al testimonio del mwami que la tierra había sido dada a los twa por sus ancestros, la corte sentenció a favor de los twa.

UGANDA

En 1991, los pigmeos twa del suroeste de Uganda fueron expulsados por la fuerza de sus bosques como consecuencia del establecimiento de los Parques Nacionales Bwindi y Mgahinga, financiados por el Fondo Mundial para el Medio Ambiente del Banco Mundial

858



Comunidad batwa en Bazuanza, Uganda. (Foto: Penninah Zaninka)

(GEF). El cierre de los bosques obligó a muchos twa a pasar de tener una existencia bastante independiente a ser intrusos empobrecidos sin tierra, forzados a sobrevivir trabajando para agricultores locales. En 1996, a continuación de un informe sumamente crítico del Consorcio de Conservación de Bosques Impenetrables Mgahinga y Bwindi ("el Consorcio") establecido para proteger a los dos parques, el Consorcio elaboró un programa para adquirir tierra para familias twa y apoyar su educación. Sin embargo, el programa batwa del Consorcio hizo muy poco debido a la falta de voluntad de la administración media para actuar a favor de los twa. La situación mejoró en 2000 cuando fue creada UOBDU (Organización Unida para el Desarrollo Batwa en Uganda) para representar a la comunidad twa. UOBDU presionó al Consorcio para que agilizara la distribución de tierra a los twa y reemplazara su personal, resultando en una actitud mucho más positiva hacia los twa.

Durante 2001, con la ayuda de su trabajador de apoyo, Penninah Zaninka, UOBDU siguió manteniendo un diálogo con el Consorcio y su funcionario de apoyo batwa. La administración del Consorcio acordó realizar reuniones formales cuatrimestrales con un comité de representantes twa de las comunidades que viven en torno a los parques. La primera de estas reuniones estaba planeada para marzo de 2001, pero finalmente se realizó en octubre de 2001 debido a la falta de voluntad inicial del Consorcio para financiar estas reuniones. El

BEST COPY AVAILABLE

acceso de los habitantes locales a los Parques Bwindi y Mgahinga y el Bosque Echuya está controlado por la ONG CARE y el Consorcio de la Fauna de Uganda, a través de comités de uso múltiple con quienes se negocia el acceso y uso de los bosques.

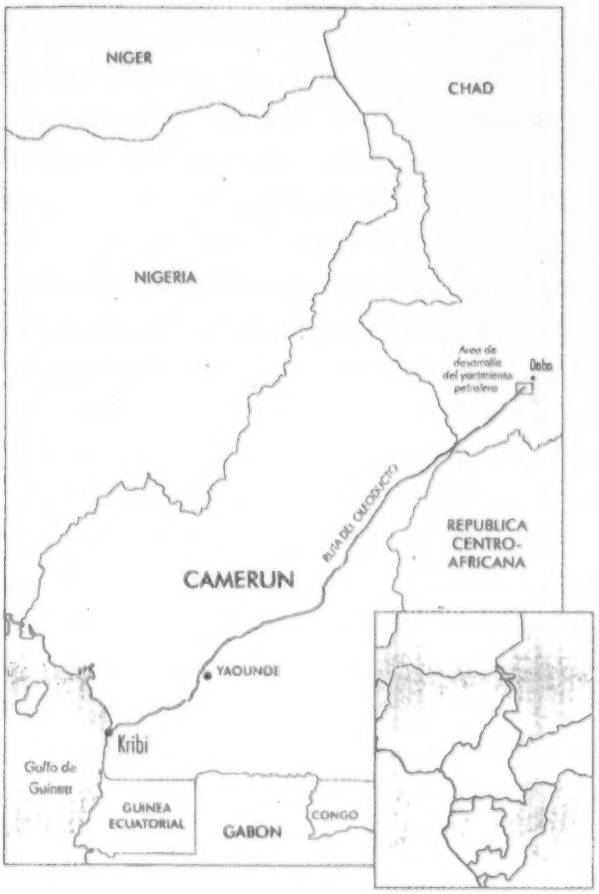
Actualmente, los twa casi no tienen representación en los comités de uso múltiple y entonces tienen poca posibilidad de negociar derechos de uso para sus comunidades. UOBDU planea tratar estos temas durante 2002.

Las autoridades locales de Kisoro intentaron despojar a un líder twa de sus tierras de las que había dispuesto bajo el derecho consuetudinario durante muchos años. Esto es una violación de la constitución de Uganda de 1995 que otorga a las personas que han obtenido tierra bajo el derecho consuetudinario durante 10 años o más el derecho al título legal. Numerosas reuniones a diferentes niveles de la administración local no han resuelto esta situación, así que ahora el asunto puede presentarse a la justicia.

En el año 2000, siete pigmeos mbuti del valle Semliki, en el lejano oeste de Uganda, fueron arrestados y encarcelados sin juicio. Habían sido acusados de ayudar a los rebeldes de las Fuerzas Aliadas Democráticas (ADF), que operan desde bases en las montañas Ruwenzori y a través de la frontera con la República Democrática del Congo (RDC). Hay sólo 72 mbuti en Uganda (son una rama de la población mbuti mucho mayor del otro lado de la frontera, en la RDC) así que la pérdida de siete hombres adultos, incluyendo al líder comunitario, fue un golpe severo. A continuación de protestas de Survival International los prisioneros fueron liberados y se informa que han establecido su propia asociación para luchar por sus derechos.

CAMERUN

Los aproximadamente 4.000 "pigmeos" bagyeli viven en el suroeste de Camerún. Sus tierras tradicionales serán cruzadas por el polémico proyecto de oleoducto Chad-Camerún, que llevará petróleo de los campos de Doba en Chad a la costa de Camerún en Kribi. El proyecto, concebido por un consorcio de compañías petroleras, fue aprobado por el Banco Mundial en junio de 2000. Un estudio realizado por representantes bagyeli con apoyo de una ONG local, Planet Survey, mostró que las consultas realizadas por el proyecto de oleo-



ducto con comunidades bagyeli durante la preparación del proyecto eran insuficientes, no habiendo informado adecuadamente a los bagyeli sobre las probables consecuencias del oleoducto[4]. Un Plan para Pueblos Indígenas que tenía la intención de mitigar los efectos del oleoducto sobre los bagyeli no cumplió con la Política sobre Pueblos Indígenas del Banco Mundial y no trató los severos problemas enfrentados por los bagyeli como resultado de su estatus marginal en la sociedad de Camerún.

En febrero y marzo de 2001 Planet Survey realizó más investigaciones entre los bagyeli en colaboración con el Proyecto para los Pueblos de los Bosques[5] revelando:

- Falta de acceso de información a través del marco institucional del proyecto. Las consultas inadecuadas, la mala comunicación entre las partes y la falta de participación informada de todas las partes, particularmente los bagyeli, habían causado confusión a todos los niveles sobre la construcción del oleoducto y sobre el proceso de compensación.

BEST COPY AVAILABLE

- El proceso de compensación del oleoducto estaba profundizando la desigualdad y los conflictos entre los bagyeli y sus vecinos aldeanos bantú. Los criterios para la compensación han permitido a la comunidad bantú apoderarse del proceso a través de un mejor acceso a la información y mayor poder político, reclamando las tierras bagyeli como propias y apropiándose de la compensación debida a los bagyeli. Hasta el momento ningún bagyeli ha sido compensado por el oleoducto, aunque cruzó sus tierras y dañó los recursos forestales.
- El proyecto del oleoducto no promovió la participación bagyeli en las consultas y tomas de decisión y no brindó ningún mecanismo para que los bagyeli contribuyeran a reformas políticas que tratarían los problemas fundamentales de discriminación contra los bagyeli y su exclusión de la sociedad civil.

Los representantes bagyeli se reunieron posteriormente con funcionarios del Banco Mundial y representantes de Cameroon Oil Transportation Company (COTCO – responsable de la construcción del oleoducto y del diseño e implementación del programa de compensación y del plan para pueblos indígenas requeridos por las directivas del Banco Mundial) para informarles cómo el oleoducto estaba afectando su acceso a las tierras, y sus impactos actuales y potenciales sobre sus medios de subsistencia. También destacaron temas más amplios sobre su marginación en la sociedad. El segundo informe interno semestral del Banco Mundial relativo a la implementación del proyecto de oleoducto, emitido en septiembre de 2001, reconoció tácitamente que el oleoducto tendrá impactos sobre los pigmeos bagyeli.

La ruta del oleoducto está ahora siendo limpiada, y el programa de compensación comunitaria está por ser establecido por COTCO y FEDEC (Fundación para el Medio Ambiente y el Desarrollo). Los objetivos de FEDEC son suministrar ayuda financiera a largo plazo para el Componente del Proyecto de Mejora Ambiental del Parque Nacional Campo Ma'an y el Componente de Desarrollo para los Pueblos Indígenas. Todos estos proyectos afectarán a los bagyeli quienes seguirán presionando por el reconocimiento de sus derechos, asistidos por agencias de ayuda locales e internacionales.

Notas y referencias

1 Ver también **Lewis J & J Knight. 2000.** *The Twa of Rwanda. Assessment of the Situation of the Twa and Promotion of Twa Rights in Post-War Rwanda.* Movimiento Mundial por los Bosques Tropicales y el Grupo Internacional de Trabajo sobre Asuntos Indígenas (IWGIA).

862

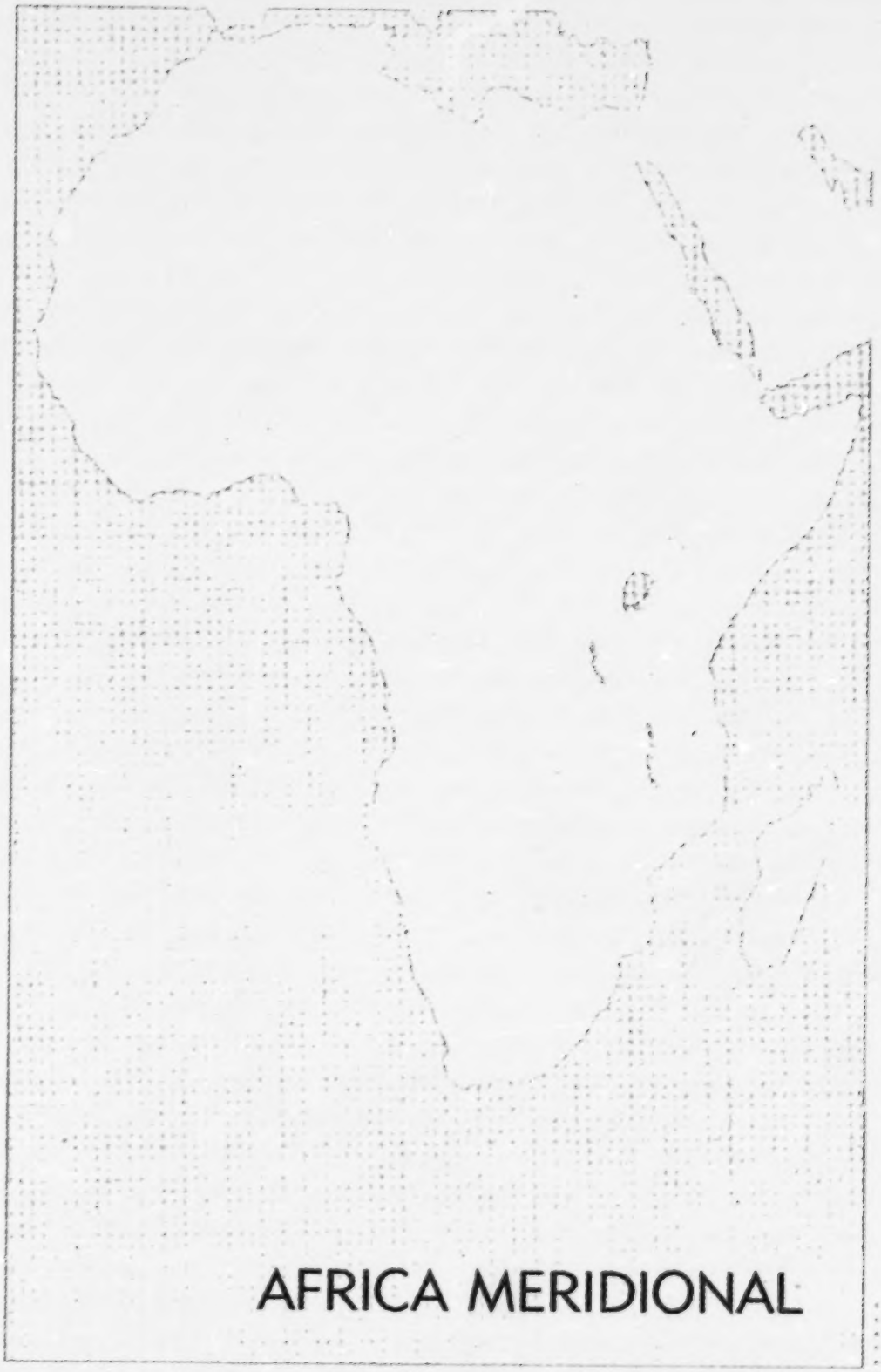
2 Se puede conseguir un sumario de las conclusiones de la Conferencia a través del Proyecto para los Pueblos de los Bosques info@fppwrm.gn.apc.org

3 Ver **Barume K. 2000.** *Heading towards Extinction? Indigenous Rights in Africa: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo.* Programa para los Pueblos de los Bosques e IWGIA.

4 Planet Survey y CODEBABIK. 2000. Rapport de l'Enquête sur le Degré d'Implication des Peuples Autochtones' dans le cycle du projet Pipeline Tchad-Cameroun. En: **Griffiths, T. y M. Colchester 2000.** *Indigenous Peoples, Forests and The World Bank: Policies and Practice.* Workshop Report, Washington D.C., 9-10 de mayo de 2000. Moreton-in-Marsh: Programa para los Pueblos de los Bosques.

5 **Nelson J., J. Kenrick y D. Jackson. 2001.** *Report on a Consultation with Bagyeli Pygmy communities impacted by the Chad-Cameroon oil-pipeline project.* Informe del Proyecto para los Pueblos de los Bosques.

410: 663



BEST COPY AVAILABLE

NAMIBIA

La República de Namibia, en el sur de Africa, ha sido testigo de una significativa expansión de conflictos que afectan a los san y otras comunidades minoritarias del país. Uno de estos conflictos proviene de la actual guerra en Angola entre las fuerzas de Jonas Savimbi y su organización UNITA y el gobierno de Angola. Este conflicto ha conducido a un considerable aumento de la cantidad de refugiados que llegan a Namibia. El gobierno de Namibia ha intentado ayudar con suministro de alimentos, servicios, protección y viviendas a más de 20.000 personas en un campamento de refugiados en Osire, en Namibia central.

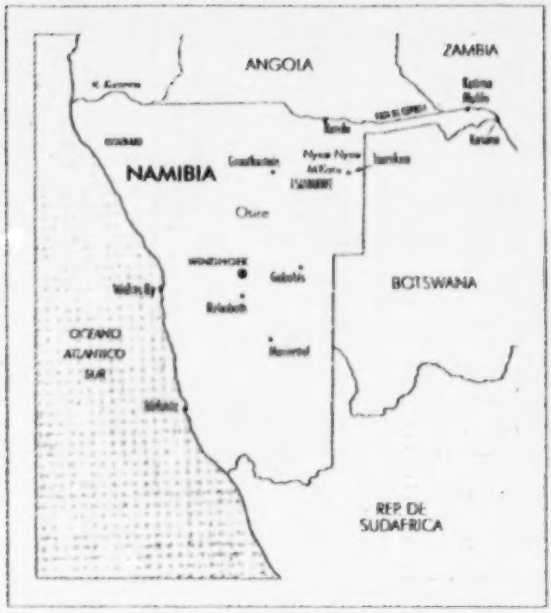
La situación en la Franja de Caprivi

La Franja de Caprivi es una franja estrecha del territorio de Namibia que se extiende unos 300 kilómetros hacia el este en dirección a Africa Central. Los khwe san, los habitantes más antiguos de la región de Caprivi, viven en esta tensa frontera que incluye a Angola, Botswana, Namibia, Zambia y un rincón de Zimbabwe. Los khwe han sido atrapados en el fuego cruzado de cuatro fuerzas oponentes: los insurgentes de Angola de UNITA, de Jonas Savimbi, los separatistas de Caprivi, las Fuerzas de Defensa de Namibia (NDF) y la Fuerza Especial de Seguridad de Namibia (SSF).

Ha habido supuestos incidentes en los que el gobierno de Namibia detuvo indiscriminadamente a individuos bajo la sospecha de ser "inmigrantes ilegales" y los deportó sin celebrar audiencias. Después de un ataque al pueblo de Katima Mulilo, en Caprivi Oriental, por disidentes en agosto de 1999, más de 1.000 khwe huyeron a Botswana para escapar de los hostigamientos y la potencial represión de las fuerzas gubernamentales de Namibia. Hoy, unos 750 khwe están alojados en el campamento de refugiados más grande de Botswana, Campamento de Refugiados Dukwe, en un área al oeste de Francistown y al este de Nata. Actualmente, muchos de los khwe estaban intentando repatriarse a Namibia y el Alto Comisionado de las Naciones Unidas para los Refugiados estaba intentando determinar si era seguro para ellos.

En la serie de hostigamientos que forzaron a los khwe al exilio, se destacan cuatro incidentes en particular: primero, las desapariciones en agosto de 2000 de al menos 15-18 khwe, un incidente que no fue informado en los medios de comunicación de Namibia hasta febrero de 2001. El paradero de estos khwe es todavía desconocido. Una ONG

665



local, el Centro de Asistencia Legal (LAC) ha intentado obtener pruebas de desaparecidos pero sin resultado.

Segundo, la negativa del Gobierno de Namibia a reconocer a Kipi George, el jefe khwe elegido popularmente como Autoridad Tradicional para el área. Kipi George ha sido un portavoz bien articulado de los khwe y fue Presidente del Grupo de Trabajo sobre Minorías Indígenas en Africa del Sur (WIMSA). La disputa sobre su legitimidad cesó cuando George murió de tuberculosis en el año 2000. Pero todavía hay interrogantes sobre la legitimidad de la Autoridad Tradicional Khwe, que el gobierno de Namibia hasta ahora se ha negado a reconocer oficialmente bajo la *Ley de Autoridades Tradicionales* de Namibia.

Tercero, en junio de 2001, miembros de SFF y NDF arrestaron a más de 80 civiles, la mayoría de ellos !xun y algunos hai//om, bajo sospecha de ser extranjeros ilegales, en la aldea Kahenge, al oeste de Rundu. Algunas de estas personas fueron detenidas, otras fueron enviadas al campamento de refugiados del gobierno de Namibia y ACNUR en Osire y a otros se los envió a Angola aunque no eran ciudadanos angoleños.

Cuarto, el 10 de julio de 2001, un hombre khwe, Hans Dikuwa, murió en custodia de las Fuerzas de Defensa de Namibia. Primero el gobierno dijo que se le disparó cuando trataba de escapar. Luego, el gobierno dijo que se había ahogado cuando intentaba cruzar el río en dirección a Angola.

Las circunstancias del caso siguen siendo dudosas. Los trabajadores por los derechos humanos han criticado al gobierno de Namibia por no observar el Convenio de Refugiados de las Naciones Unidas, por no proteger a los solicitantes de asilo y refugiados y por no establecer tribunales de inmigración y comités para supervisar los asuntos relativos a los refugiados y a los solicitantes de asilo.

BEST COPY AVAILABLE

El tema del reasentamiento de refugiados

En octubre de 2000, el gobierno de Namibia anunció que estaba planeando trasladar a los refugiados de Osire a una nueva localidad, específicamente a M'Kata en lo que ahora es el Distrito Oeste de Tsumkwe, antes Bushmanland en el nordeste de Namibia, un área dominada por pueblos san. Se dieron varias razones para este propuesto reasentamiento: (1) superpoblación del campamento de refugiados de Osire, (2) la falta de suficiente tierra y recursos naturales en la actual localidad de Osire para sustentar a la población de refugiados, (3) el deseo de establecer un área de reasentamiento de refugiados con suficiente tierra para permitir que se realicen actividades agrícolas, y (4) la necesidad de mayor seguridad para los refugiados y la gente que vive y trabaja dentro y en torno al campamento de refugiados de Osire.

La mayoría de los refugiados del campamento de Osire provienen de Angola (más del 90%). También hay refugiados de más de una docena de otros países africanos en el campamento, incluyendo una cantidad bastante considerable de Africa Central (Congo, Ruanda, Burundi) y algunos que vienen desde tan lejos como Somalia. Los antecedentes de estos refugiados son diversos: vienen de diferentes entornos, rurales y urbanos, y en el pasado se ganaban la vida de forma muy variada, incluyendo la agricultura, el pastoreo, la caza y la recolección y el trabajo asalariado. Los refugiados angoleños incluyen personas de diferentes grupos étnicos como los nganguela, lunda, ndembu y ovambo (todos grupos pastores de habla bantú) y algunos san, principalmente !xun y kxoe, ex cazadores recolectores de habla chasqueante que vivían en el sur y sudeste de Angola antes de llegar a Namibia.

El área de reasentamiento

El área potencial de reasentamiento en M'Kata, en el centro del Distrito Oeste de Tsumkwe, es un área remota ubicada a unos 165 kilómetros al nordeste del pueblo de Grootfontein. Junto con el Distrito Este de Tsumkwe, el área forma la región del Distrito de Tsumkwe, cuyos residentes sumaban unas 6.700 personas en 2001 que residen en 60 poblados diseminados en un área de 17.850 kilómetros cuadrados.

La población del Distrito Oeste de Tsumkwe consta actualmente de unos 4.500 individuos de 8 grupos étnicos diferentes. Algunos son originarios del norte de Namibia y del sur de Angola y fueron reasentados en el área en los 70 y 80, durante el tiempo del conflicto entre las fuerzas de liberación de Namibia y la Fuerza de Defensa de

Sudáfrica. Hoy, varios grupos san (!xun, vasekele y mpungu san) residen en 24 poblados, la mayoría de los cuales son relativamente pequeños. Todos los grupos han experimentado substanciales cambios sociales, económicos y políticos. Algunos de los cambios más importantes son el cambio hacia una mayor dependencia de la agricultura y el pastoreo, la implementación de leyes de protección ambiental que afectaron sus actividades de adquisición de recursos (especialmente la caza), el establecimiento de autoridades locales tradicionales (jefes) que son reconocidas por el gobierno de Namibia conforme a la *Ley de Autoridades Tradicionales*, y el establecimiento de organizaciones comunitarias de propiedad y manejo local que promueven los intereses de los habitantes locales y permiten su participación en la planificación del uso de la tierra, la conservación de la tierra y los proyectos de desarrollo.

En el Distrito Este de Tsumkwe, hay unas 2.200 personas que viven en 35 comunidades diseminadas en un área de 9.303 kilómetros cuadrados. La vasta mayoría son ju|'hoansi san. A comienzos de 1998 los ju|'hoansi establecieron lo que en Namibia se conoce como un protectorado ambiental (*"conservancy"* en inglés, n.d.e.), para supervisar los recursos de la fauna de la región. Un protectorado ambiental es un bloque de tierra comunal donde la gente puede obtener derechos a utilizar los recursos de la fauna y tomar decisiones sobre el uso de la tierra. Nyae Nyae fue la primera área comunal de conservación en Namibia y ha sido relativamente exitosa en términos de generar ingresos para sus miembros y asistirlos a alcanzar algunos de sus objetivos de protección ambiental y desarrollo.

La población del Distrito Oeste de Tsumkwe está también comprometida en el proceso de establecer un protectorado, el Protectorado N=a Jaqna, que esperan esté pronto a comienzos de 2002. Sin embargo, el problema en el Distrito Oeste de Tsumkwe es que el reasentamiento potencial de los refugiados podría impedir los esfuerzos para su establecimiento, que muchas de estas personas consideran clave para su bienestar futuro.

En el Distrito de Tsumkwe hay dos jefes reconocidos por el gobierno, uno que representa al Distrito Oeste de Tsumkwe, John Arnold, la Autoridad Tradicional !Kung, y el otro que representa al Distrito Tradicional Este, la Autoridad Tradicional Ju|'hoansi, Tsamkxao-=Oma. Las dos autoridades tradicionales son también miembros del Consejo de Ancianos de Namibia.

Hay también una serie de instituciones de base comunitaria en la región, incluyendo los comités de desarrollo en el ámbito aldeano, asociaciones de padres y maestros, comités de agua, comités de conservación comunitaria y grupos eclesiásticos. Muchas de estas organizaciones han hablado abiertamente sobre sus preocupaciones rela-

cionadas con el tema del reasentamiento de refugiados en Namibia y sobre la importancia de disponer de autonomía local y del derecho de autodeterminación.

Intereses locales y oposición

Los residentes del Distrito de Tsumkwe tienen generalmente firmes opiniones sobre el tema del reasentamiento de refugiados en el área. Muchos consideran que la región es bien conocida por sus únicos hábitats, fauna y especies de aves, y poblaciones humanas culturalmente diferentes. Están preocupados que la presencia de refugiados pueda afectar potencialmente el entorno natural y social del área en forma adversa. Una opinión comúnmente expresada sobre el traslado potencial de refugiados al área es que ejercería demasiada presión sobre los recursos naturales, agua, leña, y alimentos provenientes de plantas silvestres. Algunos dijeron que estaban preocupados de que el nivel de agua podría declinar, haciendo más difícil la supervivencia de ellos y su ganado en el área de M'Kata.

Gran parte de la oposición al proceso de reasentamiento se relaciona también con los impactos sociales y culturales del reasentamiento de la población huésped, que es una minoría indígena. Los san son conscientes de que si los refugiados se trasladan a la región los superarían ampliamente en número. Hay preocupaciones en cuanto a que la presencia de población no-san en el área afecte el grado en que los san pueden participar en la toma de decisión sobre su área. También hay una sensación de que la presencia de personas que tienen jefes con una autoridad considerable socavará la autoridad de las autoridades locales tradicionales.

Otro temor de los habitantes locales es que los refugiados dominen el mercado de trabajo y afecten los ingresos de los habitantes locales, la mayoría de los cuales ya están viviendo por debajo de la línea de pobreza. También están aquellos, ciertamente una pequeñísima minoría, que creen que la presencia de un campamento de refugiados tendrá efectos positivos como el aumento de las oportunidades de trabajo, una expansión de la infraestructura y mayores mercados para bienes y servicios.

El traslado de refugiados de un lugar a otro acarrea costos, no sólo económicos sino también fisiológicos, psicológicos y socioculturales. Estos costos van desde la creciente competencia por los recursos hasta una mayor estratificación económica y alteración de las redes sociales existentes.

Los habitantes locales consideran que la decisión del gobierno de reasentar grandes cantidades de refugiados en el área sin consultarlos viola sus derechos civiles y políticos. También creen que la pre-

669

sencia de refugiados distorsionará sus derechos sociales, económicos y culturales, incluyendo el derecho a una subsistencia adecuada. Otra preocupación es que los habitantes del Distrito de Tsumkwe tendrán que depender más de las redes de seguridad provistas por el gobierno de Namibia. Por estas razones, los habitantes locales, las agencias colaboradoras y las organizaciones no-gubernamentales, incluyendo las que trabajan directamente con la población de refugiados en Osire, se han opuesto a la propuesta de reasentamiento. Las organizaciones no-gubernamentales de las regiones de Osire y M'Kata y los habitantes locales han argumentado que el gobierno de Namibia debería realizar consultas detalladas antes de tomar cualquier decisión sobre el reasentamiento.

Aunque todavía no ha habido ningún reasentamiento, ya se sienten los efectos del anuncio del gobierno sobre el posible traslado del campamento de Osire a M'Kata. Algunas familias de refugiados no cultivaron en 2001 en espera del traslado, lo que tendrá efectos sobre su situación nutritiva e ingresos. En M'Kata, la gente experimenta ansiedad sobre el futuro. Los habitantes locales han planteado interrogantes sobre la efectividad de sus líderes en el trato con el gobierno de Namibia, algo que bien podría socavar la autoridad de las autoridades tradicionales.

El Grupo de Trabajo sobre Minorías Indígenas en el Sur de Africa ha intentado informar al pueblo del Distrito de Tsumkwe sobre algunos de los planes propuestos. Los habitantes locales de M'Kata aprecian estos esfuerzos. Al mismo tiempo, tienen la esperanza de que WIMSA y el Centro de Asistencia Legal de Namibia se sumen a las comunidades del Distrito de Tsumkwe en un esfuerzo para descartar legalmente el reasentamiento. Una de las sugerencias es que el Centro de Asistencia Legal demande legalmente al gobierno de Namibia para impedir que se realice el reasentamiento. Otra sugerencia es que los habitantes locales organicen una resistencia pasiva a los planes de reasentamiento.

En vez de reasentar gente en M'Kata, los refugiados y los habitantes locales del área de M'Kata destacan que sería más beneficioso a largo plazo si Namibia estableciera un programa de desarrollo amplio en las áreas de Osire y M'Kata. Este programa de desarrollo, que debería estar dirigido a promover la autosuficiencia de los habitantes locales y la conservación del medio ambiente, debería instrumentarse de tal manera que tuviera una extensa participación local en la planificación y la implementación. Para lograr la justicia social en Namibia, todos, tanto ciudadanos como no-ciudadanos, tendrán que poder gozar de los frutos del desarrollo y de la protección de sus derechos humanos.

870

Enfrentando los desafíos de nuevos valores

Aparte de las Autoridades Tradicionales del Distrito Oeste y Este de Tsumkwe, hay pocas oportunidades en Namibia para que los san jueguen roles importantes en la toma de decisiones gubernamentales y en la administración. Los esfuerzos del Grupo de Trabajo sobre Minorías Indígenas en el Sur de Africa y del Centro para Ciencias Sociales Aplicadas (CASS) de la Universidad de Namibia han sido importantes en lo que refiere al reconocimiento de las autoridades tradicionales san en Namibia. Una importante contribución de WIMSA y los Primeros Pueblos del Mundo - una ONG de los EE.UU. - fue la producción en 2001 de un *Manual sobre Autoridades Tradicionales* que explica a los san de Namibia algunos de los conceptos y reglas relativas a la *Ley de Autoridades Tradicionales*. El manual pone énfasis especial en el derecho consuetudinario o las leyes tradicionales, las leyes que rigen temas como el casamiento, divorcio, herencia, adjudicación de tierra y el uso de los recursos naturales.

Con el transcurso del tiempo ha habido algunos cambios en los grupos san en lo que respecta al papel de las autoridades y en las actividades de miembros comunitarios. Un ejemplo son los ju|'hoan *n!ore kxaosi*, los hombres y mujeres más ancianos hermanos del grupo nuclear quienes estaban investidos con la gestión de los recursos y áreas de vivienda, y eran quienes antes mantenían relaciones coordinadas con otros *n!ore kxaosi*. Algunas de sus actividades consistían en equilibrar la entrega –y estratégicamente retenerla- de acceso a lugares ambientales claves en los territorios tradicionales (*n!oresi*). Con la independencia de Namibia, tanto las expectativas nacionales como desarrollistas eran que esas actitudes de liderazgo y manejo de recursos desaparecerían de un día para otro y dejarían paso a estructuras eficientes de funcionamiento "democráticas" de compromiso con la región como un todo. Hoy en día, son las Autoridades Tradicionales y los miembros del consejo de conservación que tienden a tomar algunas de las decisiones sobre el manejo de la tierra y de los recursos tradicionales.

Se esperaba que los nuevos líderes ju|'hoansi trascendieran las actitudes sociales de larga data de sus parientes relativas al no-autoengrandecimiento y sus propias pautas altruistas en la medida en que forjaron nuevas entidades públicas y funciones organizativas. Los individuos han sufrido enormemente en este proceso. Como resultado, la fe anterior de las comunidades ju|'hoansi en los nuevos líderes fue crecientemente erosionada al ver la distancia creciente entre viejos y nuevos valores sociales.

Están surgiendo conflictos integracionales e intercomunales, y el desafío para los ju/'haansi es de cómo resolver estos conflictos con-

871

servando al mismo tiempo sus entrañables costumbres, tradiciones y valores.

Parte de los problemas que enfrentan los ju|'hoansi giran en torno a la competencia por los recursos. Algunos de los recursos son la fauna y las oportunidades turísticas surgidas con el sistema de usufructo del Protectorado Ambiental Nyae Nyae. En 2001 el Protectorado Nyae Nyae realizó campañas publicitarias para lograr emprendimientos a riesgo compartido, y 11 firmas diferentes presentaron sus solicitudes. El Protectorado Nyae Nyae logró obtener 100.000 N$ (anuales) por los derechos para llevar turistas a participar en safaris de caza en su área. Algunos de los fondos se usaron para sustentar los costos de manejo y administración de la conservación y se pagó un dividendo de N$ 75 a cada familia de Nyae Nyae.

El Protectorado de Nyae Nyae también ha trabajado con compañías cinematográficas que pagan una regalía a la NNC por el privilegio de trabajar en el área Nyae Nyae. El desafío a comienzos de 2002 consistía en cómo la administración del Protectorado Nyae Nyae iba a distribuir las regalías provenientes de estas actividades, es decir, si los fondos serían dados solamente a las comunidades más involucradas en actividades de turismo y la cinematografía o si todos los miembros del Protectorado recibirían una parte.

Este es el tipo de temas complejos que ahora están enfrentando los pueblos indígenas en todo el mundo: cómo asegurar mejor la equidad, transparencia y responsabilidad, suministrando al mismo tiempo los recursos suficientes para sustentar las operaciones de instituciones que representan a los pueblos indígenas.

Referencias

Suzman, James. 2001. *An Assessment of the Status of the San in Namibia*. Windhoek, Namibia: Legal Assistance Center.

Biesele, Megan y Robert K. Hitchcock. 2000. "The Ju/'hoansi San Under Two States: Impacts of the South West African Administration and the Government of the Republic of Namibia". En *Hunters and Gatherers in the Modern World: Conflict, Resistance, and Self-Determination*, Peter P. Schweitzer, Megan Biesele, y Robert K. Hitchcock, eds. Pp. 305-326. New York and Oxford: Berghahn Books.

872

BOTSWANA

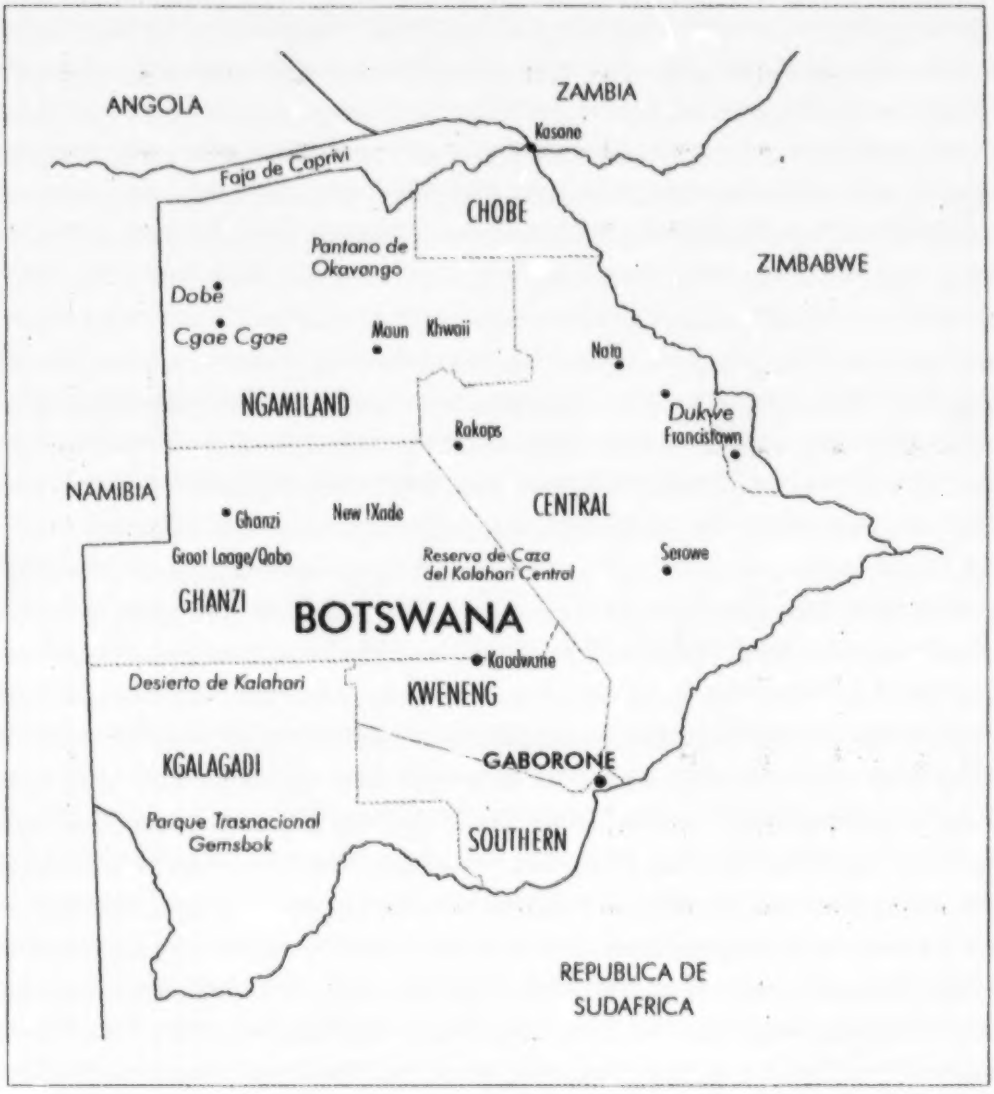
La República de Botswana, un país del tamaño de Francia, ubicado en el centro de la región del Sur de Africa, contiene la cantidad más grande de san, los "primeros pueblos" del Desierto de Kalahari y áreas adyacentes. Se estima que los san, que a veces se los llama basarwa en Botswana y bosquimanos en la literatura científica y popular y en las películas, suman 47.675 individuos en Botswana, un 54 % de la población total san, que actualmente reside en 6 de los estados nacionales del Africa meridional[1].

A diferencia de Sudáfrica, que reconoce oficialmente la existencia de pueblos indígenas dentro de sus fronteras, Botswana sigue negando que los san sean considerados más indígenas que cualquier otro grupo del país. El gobierno de Botswana considera a los san y algunos de sus vecinos como Habitantes de Areas Remotas – una categoría amplia de personas que residen en áreas rurales remotas y que, por lo tanto, están más desaventajadas que otros grupos en términos de acceso a los servicios, asistencia para el desarrollo y oportunidades laborales. Desde la perspectiva del gobierno de Botswana, los san no son más que una de las muchas comunidades que, como los herero, bakgalagadi, kalanga, mbukushu y yeei, tienen los mismos derechos conforme a la Constitución.

Los san, por su parte, se consideran a sí mismos como pueblos indígenas, *primeros pueblos*, que carecen del tipo de derechos que tienen otros en Botswana. Ciertamente, el Consultor de Litigios del Ministro del Interior de las Cámaras de Botswana sentenció que los san no tienen derechos de ningún tipo excepto el derecho a la caza[2]. Por esta razón, el período que va desde los fines de los años 70 hasta el presente, se caracterizó por los esfuerzos de los san y sus simpatizantes, incluyendo a organizaciones no-gubernamentales y grupos de defensa de los derechos de los pueblos indígenas para (1) obtener derechos legales a la tierra (*de jure*), (2) para proteger sus derechos a dedicarse a la caza y recolección de subsistencia, (3) para que sus lenguas sean reconocidas y enseñadas en las escuelas y (4) para tener oportunidades equitativas de asistencia para el desarrollo en lugares que ellos mismo elijan para vivir y trabajar[3].

El tema de la Reserva de la Fauna del Kalahari Central

Por lejos, el problema más importante que enfrentaron los san de Botswana en 2001-2002 fue la decisión del gobierno de Botswana de detener todos los servicios en la Reserva de la Fauna del Kalahari



Central (CKGR) y reasentar a los residentes restantes fuera de la reserva. Este tema multifacético de derechos humanos, que ha sido debatido en Botswana desde la mitad de los años 80, finalmente llegó al clímax hacia fines de 2001 cuando el Ministerio de Gobierno Local de Botswana decretó que se detendrían todos los servicios (agua, salud y distribución de alimentos) el 31 de enero de 2002.

La CKGR estaba originalmente reservada para los habitantes indígenas del Kalahari (principalmente san y bakgalagadi) suponiéndose que podrían continuar utilizando sus recursos naturales (alimentos provenientes de la caza y de las plantas silvestres y medicinas). En 1997, el gobierno de Botswana, ostensiblemente para promover la protección del medio ambiente, maximizar el turismo y, de acuerdo a algunos observadores, la explotación de diamantes y otros

874

BEST COPY AVAILABLE

minerales, decidió trasladar unos 1.100 san y bakgalagadi de la reserva y ubicarlos en campamentos disfuncionales en los bordes de su antigua área ancestral.

Las restantes 100-150 familias han luchado desde entonces por su derecho a continuar viviendo dentro de la reserva. Con la ayuda de un Equipo Negociador constituido en 1997, integrado por representantes de las comunidades de la CKGR, organizaciones san como el Primer Pueblo del Kalahari (FPK), el Grupo de Trabajo sobre Minorías Indígenas en Africa del Sur –Botswana (WIMSA), el Consejo Cristiano de Botswana (BCC), DITSHWANELO (el Centro de Botswana para los Derechos Humanos) y un asesor legal, estas familias han realizado esfuerzos sostenidos para entrar en negociaciones con el gobierno de Botswana.

Durante la primera mitad de 2001, se celebraron varias reuniones entre el Equipo de Negociación y el Departamento de la Fauna y Parques Nacionales (DWNP) y había esperanzas de que el gobierno aprobara el tercer proyecto del *Plan de Manejo para la Reserva de la Fauna del Kalahari Central* que había sido redactado por el DWNP. Este plan incorporaba las conclusiones del mapeo comunitario realizado en la CKGR con el apoyo de FPK y organizaciones internacionales para la defensa de los derechos de los pueblos indígenas, especialmente una ONG holandesa, Global Ministries y el Grupo Internacional de Trabajo sobre Asuntos Indígenas (IWGIA).

Sin embargo, en agosto, durante una visita a la CKGR las declaraciones del Ministro Asistente de Gobierno Local referentes a que todos los servicios a los residentes de CKGR serían detenidos a comienzos de 2001 eran de mal augurio, aunque después fueron desmentidas por la misma Ministra.

En septiembre, los medios de difusión internacionales anunciaron que una porción substancial de tierra en el CKGR (71%) había sido restaurada a los san por el gobierno de Botswana. Lamentablemente, la noticia fue prematura e infundada. A mediados de octubre, Aarón Johannes, un san que trabaja para WIMSA, informó que el suministro de agua a los habitantes del Kalahari Central había sido detenido y que la gente estaba siendo forzada a abandonar la reserva debido a la falta de agua. Ese mismo mes las licencias de caza de subsistencia –las Licencias Especiales para la Caza, SGL- que tenían algunos residentes de la CKGR, expiraron y no fueron renovadas.

Una semana más tarde, el Presidente de Botswana declaró en su Discurso a la Nación que se había tomado la decisión de suspender los servicios (a saber suministro de agua, raciones de alimentos a los pobres registrados y huérfanos, suministro de transporte de y hacia la escuela para los niños y visitas de equipos sanitarios) a comienzos de 2002.

La vasta mayoría de los residentes de la Reserva de la Fauna del Kalahari Central, que según informes sumaban 589 en agosto de 2001 y que vivían en media docena de pequeñas comunidades diseminadas en un área de más de 52.000 kilómetros cuadrados, no querían abandonar el Kalahari Central. En cambio, exhortaron al Equipo Negociador que intentara una vez más llegar a un acuerdo con el gobierno de Botswana para que pudieran quedarse y ejercer sus derechos a la tierra y a los recursos naturales en la Reserva.

Representantes del gobierno de Botswana, incluso la Ministra de Gobierno Local, Sra. Margaret Nasha y el Vicepresidente, Ian Khama se reunieron con el Equipo Negociador en noviembre y diciembre de 2001. No obstante, estas discusiones no llevaron a un cambio en la posición del gobierno relativa a la Reserva de la Fauna del Kalahari Central. El gobierno sostuvo que el reasentamiento de los habitantes del Kalahari Central en áreas fuera de la reserva facilitaría el suministro de servicios sociales y asistencia para el desarrollo y les permitiría integrarse más a la sociedad de Botswana. Por su parte, los san y bakgalagadi que viven en Kalahari Central dijeron que querían continuar residiendo en sus territorios ancestrales.

La Ministra Nasha dijo en una carta a la dirección de DITSHWANELO, el Centro de Botswana para los Derechos Humanos: "Nosotros, como Gobierno, creemos simplemente que es totalmente injusto dejar a una parte de nuestros ciudadanos en el subdesarrollo bajo el pretexto de que les estamos permitiendo practicar su cultura"[4].

Por otro lado, los san dijeron que querían poder, como lo expresaron, proteger sus tradiciones culturales y al mismo tiempo asegurar su subsistencia en la forma en que ellos mismos elijan.

El suministro de agua y otros servicios fue detenido a fines de enero de 2002. En febrero, se enviaron camiones a la Reserva y se dijo a la gente que cargara sus pertenencias en ellos, para ser trasladados a dos asentamientos fuera de la reserva, uno en New !Xade, en el Distrito de Ghanzi, al oeste de la reserva y el otro en Kaudwane, en el Distrito de Kweneng, al sudeste de la reserva. A fines de febrero de 2002, quedaban nada más que 67 personas en la reserva, e incluso ellos estaban haciendo preparativos para trasladarse.

El 10 de abril de 2002, los abogados del Equipo de Negociación presentaron la demanda de un "affidávit investigativo" en la Alta Corte de Botswana[5]. El affidávit reclamaba la restauración de los servicios suspendidos el 31 de enero de 2002 y la restauración de la posesión de la tierra a los residentes del Kalahari Central.

El caso fue rechazado el viernes 26 de abril de 2002 por el juez de la Alta Corte, quien sentenció que el primer solicitante, Roy Sesana, no podía, en términos legales, presentar un caso de esta naturaleza a la justicia porque "no era residente de la Reserva de la Fauna del

Kalahari Central". El caso fue también rechazado sobre la base de tecnicismos. El Juez de la Alta Corte fue más lejos, expresando que "el contenido del affidávit de Roy Sesana era demasiado sofisticado y complejo para la compresión de una persona analfabeta". Como señaló DITSHWANELO en un comunicado de prensa del 2 de mayo de 2002, el Sr. Sesana era, en realidad, un residente de Molapo en la Reserva de la Fauna del Kalahari Central, y el analfabetismo no podía interpretarse de ninguna manera como falta de conocimiento. El Equipo Negociador está planificando una apelación contra la decisión de la Alta Corte.

Queda claro a partir de la forma en que el caso fue tratado por la Alta Corte que el gobierno de Botswana está predispuesto y determinado a no reconocer los derechos de los san y los bakgalagadi en la Reserva de la Fauna del Kalahari Central. También es claro que el gobierno está molesto por los esfuerzos del Equipo Negociador y sus abogados, y los diversos grupos indígenas san e internacionales que trabajan por los derechos humanos, por desafiar la reputación de Botswana como modelo de democracia y de derechos humanos, al punto que algunas de las personas involucradas en el caso del Kalahari Central estaban siendo perseguidas por la policía de Botswana y en mayo de 2002, se estaba considerando acusarlas de operar "instrumentos de comunicación ilegales" (es decir, una radio).

Derechos a la caza de subsistencia

Los debates sobre el tema del tratamiento de los supuestos "cazadores furtivos" por funcionarios del gobierno de Botswana, incluyendo guardias de la fauna del Departamento de la Fauna y Parques Nacionales y agentes de policía, continuaron durante 2001 (ver *El Mundo Indígena 2000-2001*)

En marzo de 2001, 5 cazadores de Kaudwane fueron arrestados y supuestamente golpeados por guardias de la fauna por cazar en la Reserva de la Fauna del Kalahari Central. El caso trae reminiscencias de muchos otros casos. El problema con estos casos no reside solamente en el hecho de que las personas sospechosas de violar las leyes de caza sean maltratadas física y mentalmente por funcionarios del estado de Botswana, sino que son arrestadas y detenidas a pesar del hecho que han estado cazando legalmente. Desde la perspectiva de las personas involucradas, las acciones de los funcionarios del gobierno no tienen justificación legal y son comparables al hostigamiento e intimidación de personas porque se dedican a prácticas que ellos consideran centrales para su cultura. Como lo dijo un san en 2001, "La caza es nuestro patrimonio". Los grupos de defensoría san sos-

877

tienen que no permitir a la gente continuar obteniendo recursos de los animales salvajes, a pesar de que la legislación lo permite, es una violación de los derechos económicos, sociales y culturales de los san.

El gobierno de Botswana no ha investigado a fondo estos incidentes, ni tampoco ninguno de los funcionarios involucrados en estos sucesos ha sido acusado de ningún crimen. La preocupación de los san es que la violación de las libertades individuales y la seguridad de las personas continuará a menos que se realice algún esfuerzo para investigar casos como este y hacer valer la responsabilidad individual por mala aplicación de la justicia. Como expresó un san, "Los funcionarios del gobierno de Botswana no pueden seguir teniendo permiso de actuar con impunidad cuando violan nuestros derechos".

Consorcios comunitarios bajo amenaza

La decisión del Ministerio de Gobierno Local y del Ministerio de Tierras, Vivienda y Medio Ambiente de enero de 2000, relativa a los consorcios comunitarios en Botswana todavía tiene que ser revocada formalmente. Esta decisión sostenía que las comunidades ya no tendrían derecho a tomar sus propias decisiones sobre recursos naturales o retener sus propios fondos, porque los beneficios de los recursos son "un recurso natural, como los diamantes"[6]. La decisión afecta a los aproximadamente 50 proyectos de recursos naturales de base comunitaria de Botswana, algunos de los cuales representan integrantes san. Algunos consorcios comunitarios como Cgae Cgae (/Xai/Xai) en Ngamiland, obtuvieron hasta un millón de pula (pula es aproximadamente US$ 0,15) anualmente proveniente de los safaris de caza y las actividades turísticas.

A pesar de las dificultades impuestas por la incertidumbre en torno a las decisiones del gobierno de Botswana sobre los consorcios comunitarios, crece la cantidad de comunidades locales que están interesadas en participar en el manejo y utilización de recursos naturales. Con la asistencia de organizaciones san como TOCADI, el Consorcio para las Iniciativas Culturales y de Desarrollo de Okavango, las comunidades están dedicadas a organizarse como "grupos de manejo representativos y responsables" y están intentando obtener el registro legal del gobierno de Botswana como entidades legales. Las comunidades pueden hacer esto conforme a la legislación nacional relativa a las actividades de manejo de recursos de base comunitaria en áreas que son catalogadas como Áreas de Caza de Control Comunitario (CCHAs).

Algunos grupos san están en proceso de intentar obtener derechos a la tierra de parte del Gobierno. La regularización de tierras implica

878

el establecimiento de áreas reconocidas legalmente. Se debe hacer cuidadosos relevamientos de las áreas, que tomen en cuenta reivindicaciones *de facto* (consuetudinarias) y *de jure* (legales) sobre la tierra. Estas investigaciones incluyen (1) entrevistas con los habitantes locales, (2) consulta de materiales de archivo, incluyendo fotos aéreas y mapas y (3) consulta de registros en las Juntas de Tierra y los documentos de ministerios de tierras (p.ej., el Departamento de Relevamientos y Tierras del Ministerio de Tierras, Vivienda y Medio Ambiente) y las Cámaras del Ministerio de Justicia y en la Junta Local y la Subjunta Local.

En algunas áreas de Botswana rural, como el área Dobe (Área de Caza Controlada NG 3, de 5.760 kilómetros cuadrados de tamaño) y Ncwaagom (Áreas de Caza Controlada NG 10 y 11.800 Km cuadrados de extensión), se han realizado trabajos de cartografiado comunitario con la asistencia de un consultor, Arthur Albertson. Albertson trabajó con san locales en el trazado de mapas que implica el uso de instrumentos de Sistemas de Posicionamiento Geográfico (GPS), fotografías aéreas y relevamientos de campo. Los impactos de estos esfuerzos han sido profundos. En el caso del área Dobe de Ngamiland occidental que tiene 8 *n!oresi* (territorios) de un tamaño desde 40 Km cuadrados (¡'Arin//ao) hasta 244 Km cuadrados (G/hii'ahn), las comunidades han logrado obtener derechos al agua del Consejo del Distrito Noroeste y la Junta de Tierras Tawana y han perforado con éxito pozos de agua. En el caso de Ncwaagom, Bugakwe, Yeei y Mbukushu, las comunidades han colaborado en la planificación de una senda cultural y un programa de turismo.

Ahora hay consorcios comunitarios en Ngamiland en Khwaai, al norte de la Reserva de la Fauna Moremi (NG 18 y NG19, 1.195 Km cuadrados), Mababe (NG 41, 2.045 Km cuadrados), /Xai /Xai (NG 4, 9.293 Km cuadrados) y en Groot Laage y Qabo en el Distrito de Ghanzi (GH 1, 3.908 Km cuadrados). La planificación e implementación de los consorcios comunitarios no siempre ha sido fácil. A veces hay diferencias de opinión entre miembros comunitarios sobre quién tiene cuáles derechos sobre áreas específicas en una región. También hay desacuerdos interétnicos ocasionales, como el caso, por ejemplo, en Dobe entre los ju|'hoansi y algunos herero. Tal como lo han aprendido las organizaciones san, las negociaciones cuidadosas y las técnicas de manejo de conflictos son fundamentales en esas situaciones. Se debe tener cuidado para asegurar que los grupos más poderosos no dominen a los que son menos poderosos e influyentes.

Las evaluaciones de estos consorcios por las organizaciones san y los investigadores muestran que, para tener éxito, deben crear instituciones locales funcionales y deben obtener derechos garantizados sobre sus áreas. Se debe prestar atención a los temas de conservación

879

y desarrollo y el estado de la base de recursos debe ser cuidadosamente monitoreado. Para el éxito de estos proyectos es crucial la plena participación de los habitantes locales en la planificación y toma de decisiones. Se ha concluido que los consorcios comunitarios trabajan mejor si hay apertura y transparencia y si hay una justa distribución de los beneficios. Se espera que el gobierno de Botswana aprenda algo de las valiosas lecciones sobre la importancia de promover no sólo los derechos civiles y políticos sino también los derechos sociales, económicos, culturales y planetarios (ambientales), como lo han hecho las comunidades y organizaciones san.

Notas y referencias

1 **Suzman, James, (ed.). 2001.** *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*. Windhoek, Namibia: Legal Assistance Centre. Página 6, Esquema 1.

2 **D. Will**, 'Opinion in Re: Common Law Leases of Tribal Land' Ministry of Local Government and Lands file 2/12, 23 de enero de 1978.

3 **Cassidy, Lin, Ken Good, Isaac Mazonde, y Roberta Rivers. 2001.** *An Assessment of the Status of the San in Botswana*. Windhoek, Namibia: Legal Assistance Centre. **Saugestad, Sidsel. 2001.** *The Inconvenient Indigenous: Remote Area Development in Botswana, Donor Assistance, and the First People of the Kalahari*. Uppsala, Sweden: The Nordic Africa Institute.

4 Carta a Alice Mogwe de la Ministra de Gobierno Local, Margaret Nasha, 7 de enero de 2002, CLG.1488 XIV [145]

5 *Roy Sesana, First Applicant, Keiwa Setlhobogwa and 241 Others, Second and further Applicants, versus the Attorney General in his capacity as a recognized agent of the Government of the Republic of Botswana, Respondent.*

6 **Ministry of Local Government. 2000.** *Management of Funds Realized from the Community Based Natural Resources*. Savingram LG/3/6/2/1 IV (46), 30 de enero de 2001. Gaborone, Botswana: Ministerio de Gobierno Local.

SUDAFRICA

Durante el año pasado se lograron progresos importantes en la promoción de la lucha por los derechos de los pueblos indígenas en Sudáfrica. Los khoi-san, mediante sus propios esfuerzos concertados, fueron los responsables de ubicar firmemente su caso en la agenda nacional. Esto ocurrió a pesar de que otros temas importantes

880

dominaban la agenda nacional, inter alia, las elecciones presidenciales en Zimbabwe, la continua controversia sobre la plaga del SIDA y el impacto de la situación empeorada de la moneda Sudáfricana. Acusaciones de transacciones ilegales en el sistema cambiario con el extranjero provocaron que el Gobierno nombrara la comisión investigadora Myburgh para examinar la deteriorante situación económica.

Otro punto importante de las acciones del gobierno Sudáfricano fue la atención otorgada a la Nueva Asociación para el Desarrollo de Africa (Nepad). Nepad, como programa, tiene la intención de dar el puntapié inicial al desarrollo económico en Africa para aliviar la pobreza a escala continental y asegurar el desarrollo sostenible en todo el continente. Este acontecimiento se empalmó con la Cumbre Mundial de las Naciones Unidas para el Desarrollo Sostenible (WSSD) a celebrarse en Johannesburgo en agosto y septiembre de 2002. Irónicamente, los khoi-san, como pueblos indígenas originales, tuvieron que luchar para obtener reconocimiento entre los grupos internos de la sociedad civil para lograr una representación en la WSSD. Esto sucedió a pesar del hecho que los khoi-san son anfitriones de una conferencia pre-cumbre para todos los pueblos indígenas del mundo en los preparativos para la WSSD.

Situación de las políticas para pueblos indígenas

La situación de las políticas para los pueblos indígenas de Sudáfrica permaneció incambiada, como se informó el año pasado (ver *El Mundo Indígena 2000-2001*): diferentes departamentos gubernamentales mostraron signos de colaboración pero sin una directiva política coherente o compromiso político del Gabinete y la Oficina de la Presidencia. Mientras tanto, los pueblos indígenas del país y la nación Sudáfricana en su conjunto todavía están esperando la publicación oficial de la investigación de la Comisión de Derechos Humanos sobre los Derechos de los Pueblos Indígenas. También, en el momento de escribir este artículo, se espera aún la publicación de una serie de informes comisionados por el Departamento de Gobierno Provincial y Local (DPLG), ex Departamento de Desarrollo Constitucional y Asuntos Provinciales, relativos a la ubicación constitucional de las comunidades khoi-san en Sudáfrica. El retiro de funcionarios claves de ciertos departamentos gubernamentales también ha influido aparentemente sobre el progreso de este asunto.

681

Las actividades del Gobierno iniciaron el Consejo Nacional Khoi-San

Debido en parte al prolongado proceso de reorganizar y restablecer las prioridades del sistema burocrático de gobierno después de que el Sr. Mbeki asumió la Presidencia que antes ejercía el Sr. Mandela, el progreso sobre Asuntos Constitucionales que afectan a los primeros pueblos originales de Sudáfrica llegó virtualmente a un punto muerto en 2001. El informe de *El Mundo Indígena 2000-2001* anticipó correctamente que el cambio de la cartera indígena al nuevo DPLG en vez del Departamento de Justicia contribuiría a una "disminución de su importancia y había pocas esperanzas que un asesoramiento político importante fuera inminente". Esta incertidumbre causó, en el mejor de los casos, descontento entre los diferentes líderes khoi-san.

Implementación de los derechos básicos a la lengua

Aunque el Gobierno Sudáfricano está, en términos de la Constitución, a favor del desarrollo de las lenguas khoekhoe y san y de la implementación de proyectos de educación en lengua materna, todavía no ha puesto a disposición ninguna financiación estatal de significación a este respecto. A pesar de esto, hay un creciente intento de los khoi-san de promover su lengua, especialmente en forma oral, particularmente en las provincias de Cabo Norte y Cabo Oeste.

Restitución de tierras

No ha habido ningún cambio significativo en el año en revisión. La restauración de derechos a la tierra de los khoi-san sigue siendo un tema sumamente emotivo y se necesita hacer mucho para revertir el desposeimiento que tuvieron que sufrir desde 1652 hasta el presente.

Se establece la unidad khoi-san

En alguna medida, el año 2001 marcó un momento definitorio en la lucha de los khoi-san en Sudáfrica. Por primera vez en la historia moderna todos los pueblos khoi-san de Sudáfrica se unieron en un solo objetivo común, realizar una conferencia consultiva nacional. Más de 400 delegados de los san, representando a los ǂkhomani, !xu y khwe así como todos los khoekhoen, representando los nama, griqua, korana y grupos del Cabo occidental y oriental, aunaron fuerzas

882

en un evento histórico en marzo / abril en la ciudad de Oudtshoorn. Fue de gran significación que el Presidente Adjunto de la República de Sudáfrica, Sr. Jacob Zuma, abriera la conferencia en nombre de la Presidencia pues el Presidente Thabo Mbeki estaba en el extranjero en una visita de estado oficial.

La reunión de la *"National Khoi-San Oorlegplegende Konferensie (NKOK)"*, también conocida como la Conferencia Consultiva Nacional Khoi-San, estuvo estructurada en torno a más de 30 grupos nacionales khoi-san afiliados. El Consejo NKOK de 20 personas, debidamente electo, enfrentó una tarea abrumadora en su primer año de existencia. La falta de financiamiento y capacidad hicieron que la ejecución del mandato dado al Consejo por los delegados de la Conferencia en la Conferencia Oudtshoorn fuera sumamente ardua.

No obstante, en algunos aspectos se hizo un progreso alentador para concretar las resoluciones adoptadas unánimemente allí. La formación del NKOK proclama por cierto un nuevo comienzo para los pueblos indígenas de Sudáfrica porque se estableció una base para la unidad de objetivos. Cementar este acontecimiento y la recién encontrada unidad entre los pueblos indígenas khoi-san es un desafío sumamente amedrentador, ya que las organizaciones de los pueblos san eran hasta el momento aparentemente consideradas como los únicos representantes de los pueblos indígenas de Sudáfrica. También se logró marcados progresos en la toma de conciencia de identidad entre los descendientes khoi-san que bajo el apartheid eran clasificados como de "color". Aunque no hay estadísticas oficiales disponibles parece haber un aumento en la cantidad de personas que se identifican con su olvidada y reprimida herencia. Esto es un buen augurio para los pueblos indígenas y su lucha por restaurar sus derechos.

Un acontecimiento interesante es el fenómeno que ya no son solamente los empobrecidos pueblos rurales que parecen reclamar su identidad khoi-san. Miembros de la comunidad con estudios y posición social, también comienzan a buscar sus raíces, aunque no públicamente. Tanto en los debates públicos como en los privados existe un creciente interés y publicidad en torno a la cultura y el patrimonio khoi-san en el ámbito nacional, no sólo entre los descendientes khoi-san sino también entre otros grupos culturales. Sin embargo, el interés entre los Sudáfricanos blancos parece surgir mayormente de una perspectiva comercial y turística. El arte rupestre khoi-san, las danzas tradicionales y los sitios históricos son de creciente interés y ofrecen algo nuevo y único a los turistas locales e internacionales. Tales sitios y prácticas presentan una posibilidad real para la formación de asociaciones públicas y privadas entre los pueblos khoi-san, las instituciones gubernamentales y el sector privado para desarrollar el interés en toda la nación.

La próxima Conferencia NKOK está planeada para el tercer cuatrimestre de 2003 en Springbok, Namaqualand, donde el ejecutivo debe informar a la Conferencia sobre la implementación de las resoluciones tomadas en la Conferencia Oudtshoorn.

Mitigación de la pobreza

El Gobierno nacional ha declarado a la pobreza y su erradicación como uno de sus principales objetivos. Esto se hizo tangible en el presupuesto del Ministro de Finanzas durante los dos últimos años en que se adjudicaron unos cuantos miles de millones de "rand" (unidad monetaria Sudáfricana *N.d.T.*) para esos programas. Los respectivos departamentos gubernamentales son responsables de la implementación de estos programas y de la adjudicación de fondos. El Departamento de Arte, Cultura, Ciencia y Tecnología (DACST) destinó fondos para la mitigación de la pobreza de los khoi-san en el área de las industrias culturales. Un estudio de factibilidad, realizado por el Instituto de Investigación Histórica (IHR) de la Universidad del Cabo Occidental, hizo posteriormente recomendaciones a DACST. El gobierno aprobó estas recomendaciones y los fondos disponibles fueron adjudicados a los pueblos khoi-san en distintas provincias en Sudáfrica, entre otras, las provincias del Cabo Norte y Cabo Nordeste. Los mismos pueblos khoi-san están administrando estos proyectos en asociación con estructuras gubernamentales provinciales y locales, así como también estructuras paraestatales, con la experiencia requerida.

El Proyecto del Legado Nacional Khoi-San

Otro proyecto de mitigación de la pobreza relacionado con los pueblos khoi-san es el Proyecto del Legado iniciado por el gobierno. El Gabinete ha identificado nueve proyectos diferentes para ilustrar el pasado de Sudáfrica, entre otros, el Proyecto del Legado del Museo Nelson Mandela y el proyecto del Legado Khoi-San. La Agencia de Recursos del Patrimonio Sudáfricano (SAHRA) recibió el mandato de supervisar el proyecto. A su vez, SAHRA comisionó al IHR a hacerse cargo del proyecto de la fase de conceptualización a la de implementación. Se celebraron una serie de talleres comunitarios para consultar con los representantes de los pueblos khoi-san para que sean efectiva y significativamente consultados en el proceso y para que se apropien de su cultura. Se identificaron unos cuantos emplazamientos a ser considerados durante los próximos años.

884

El retorno de los restos de Sarah Baartmann

A este importante tema se le otorga una categoría especial. El viernes 3 de mayo de 2002, los restos de Sarah Baartmann, quien dejó su país de nacimiento hace casi doscientos años bajo coacción y nunca fue enterrada después de su muerte, retornaron a Sudáfrica desde Francia después de haber sido mantenidos en un museo de París todos estos años. El gobierno francés se rindió al final al trabajo de lobby y de abogacía del gobierno Sudáfricano y de los descendientes khoi-san para que se devolvieran sus restos. Una delegación de cinco personas encabezada por el gobierno estuvo en París para la ceremonia de entrega oficial de los restos que ahora serán enterrados en una ceremonia especial durante el 2002. El lugar de descanso final de Sarah Baartmann será decidido por todas las partes interesadas pertinentes. Este símbolo de la opresión que sufrieron los khoi-san ha sido un punto central en las manifestaciones de la lucha de los tiempos modernos por las mujeres khoi-san en particular y todos los pueblos khoi-san en general. Además una académica khoi-san ha sido nombrada por la Universidad del Cabo Occidental para coordinar un proyecto de investigación asociado sobre todos los temas pertinentes al retorno de los restos de Sarah Baartmann.

En conclusión

Queda mucho trabajo por delante para superar los importantes desafíos y obstáculos que enfrentan los pueblos indígenas de Sudáfrica. Su determinación y voluntad, junto con el apoyo de estructuras internacionales como las Naciones Unidas y otras instituciones simpatizantes impulsarán un mayor entusiasmo para lograr finalmente el éxito.

PARTE II

DERECHOS INDIGENAS

886

BEST COPY AVAILABLE

7ª SESIÓN DEL GRUPO DE TRABAJO DE LA ONU SOBRE EL PROYECTO DE DECLARACIÓN SOBRE LOS DERECHOS DE LOS PUEBLOS INDÍGENAS

La séptima sesión del Grupo de Trabajo de la ONU sobre el Proyecto de Declaración sobre los Derechos de los Pueblos Indígenas (de aquí en adelante "el Grupo de Trabajo") fue celebrada del 28 de enero al 8 de febrero de 2002[1]. Estaba originalmente programada, como en años previos, para octubre-noviembre de 2001, pero fue pospuesta. En la sesión de apertura del Grupo de Trabajo, el Sr. Luis-Enrique Chávez, un diplomático de Perú, fue reelecto como Presidente-Relator por tercera vez consecutiva. El Embajador José Urrutia, ex embajador de Perú ante la ONU en Ginebra, ejerció previamente este cargo durante las cuatro primeras sesiones del Grupo de Trabajo de 1995 a 1998. El Sr. Chávez fue llamado a Lima urgentemente a fines de la primera semana, y después de algunos debates y discusiones, el Sr. José Valencia (Ecuador) fue elegido como vicepresidente actuante para el resto de la sesión.

Después de consultas con gobiernos y pueblos indígenas, se acordó el siguiente plan:

> *Discusiones generales sobre participación y procedimiento y a solicitud de los pueblos indígenas, derechos colectivos; y tierra, territorios y recursos naturales;*
>
> *Discusiones específicas sobre el Artículo 13, que estaban pendientes desde la última sesión; y Artículos 6 al 11. (No obstante, sólo los artículos 6, 9 y 10 fueron discutidos en detalle. Los Artículos 7, 8 y 11 serán discutidos en la 8ª sesión del Grupo de Trabajo).*

Como en sesiones previas, las reuniones alternaron entre sesiones formales e informales, informales para generar debate y discusión, y formales cuando se registraba algún consenso. Todos los participantes, gobiernos y representantes indígenas, podían tomar la palabra sobre cada punto de la agenda, brevemente y ateniéndose al punto. El Presidente aclaró que el principal objetivo de las discusiones era realizar un intercambio de opiniones como forma de identificar, lo más concretamente posible, los problemas enfrentados por algunos gobiernos con respecto a provisiones o principios específicos del Proyecto de Declaración, para reducir las diferencias de posiciones y trabajar en dirección de un enfoque consensual. Una vez que se lograra el consenso, el Presidente convocaría una sesión formal para asegurar que éste fuera registrado en las actas de la reunión.

Discusiones generales

Es difícil incluir todas las cuestiones y temas planteados o hacer justicia a la riqueza del debate. Este es simplemente un intento de brindar una visión general de las discusiones que tuvieron lugar en la 7ª sesión del Grupo de Trabajo sobre el Proyecto de Declaración para permitir a los pueblos indígenas y otros comprender cuáles son los principales temas en juego, y cómo evoluciona la discusión.

Participación y procedimiento
El segundo día de la reunión, el Grupo de Trabajo se concentró en temas de procedimiento, centrados en:

Métodos alternativos. Había preocupación por el lento progreso del Grupo de Trabajo, dado que sólo quedaban dos años para el fin del Decenio en 2004. Se propusieron métodos alternativos de trabajo, que incluyen:

> *(i) El gobierno de México propuso el establecimiento de un Buró, integrado por el presidente, 4 vicepresidentes regionales y dos coordinadores indígenas, para dedicarse a consultas durante las sesiones del Grupo de Trabajo y también entre las sesiones. Esta propuesta no recibió el apoyo de otros gobiernos que creían que agregaría un nuevo nivel (Australia) y, por lo tanto haría más engorroso el trabajo (Noruega). También se señaló que sería difícil incluir a representantes indígenas porque sólo los gobiernos podían ser parte de los organismos de la Comisión de Derechos Humanos (Nueva Zelanda). Los pueblos indígenas eran generalmente más favorables, pero solicitaron mas información sobre las implicaciones prácticas;*
>
> *(ii) Canadá propuso un grupo de "Amigos del Presidente". Se nombraría un grupo de representantes de gobiernos y pueblos indígenas para asistir al Presidente durante las sesiones, una técnica anteriormente usada pero no continuada. Aunque esto recibió algún apoyo, (Nueva Zelanda y Noruega), no hubo consenso sobre ninguna de las alternativas.*

Sin embargo, el Presidente-Relator identificó la falta de voluntad política por parte de los gobiernos como una de las principales razones del lento progreso del Grupo de Trabajo, y no ningún método de trabajo. El Grupo de Trabajo continuó con los métodos corrientes.

Consultas gubernamentales intersesionales: En octubre de 2001, se organizó una reunión de gobiernos en Ginebra, a iniciativa del go-

bierno de Canadá. El objetivo era que los gobiernos se reunieran y se prepararan para las sesiones del Grupo de Trabajo. Durante esta reunión, se prepararon propuestas para un texto alternativo de la Declaración, cuyas copias estaban a disposición en la reunión (referidas como "no-documentales" -en el lenguaje de la ONU- porque no habían sido presentadas al Grupo de Trabajo). El gobierno de los Estados Unidos no participó en la reunión de octubre y, por lo tanto, propuso muchos cambios a los documentos de discusión de los gobiernos durante las sesiones del Grupo de Trabajo. Los representantes indígenas criticaron la reunión de octubre por su falta de transparencia, y por ser contraria a los principios de igualdad y no-discriminación. Canadá explicó que la reunión había sido celebrada de buena fe y como forma de hacer avanzar al proceso, teniendo de antemano propuestas para ser consideradas en la sesión del Grupo de Trabajo.

Criterios esenciales: Otro tema que los pueblos indígenas consideran que es cada vez más urgente tratar es la cuestión de si deben comprometerse en un proceso de volver a redactar el Proyecto de Declaración o continuar defendiéndolo como fue redactado originalmente. Esta cuestión fue planteada en esta sesión, mediante el proceso no-documental.

Muy pocos gobiernos han declarado que están dispuestos a adoptar el Proyecto de Declaración tal como fue adoptado por la Subcomisión, por ejemplo, Guatemala y más recientemente México, como resultado del proceso nacional de consulta. Muchos han declarado también que pueden adoptar algunos artículos tal como están redactados actualmente. Sin embargo, la mayoría es reacia a la adopción del texto completo del Proyecto de Declaración tal como fue originalmente redactado, y tienen problemas o reservas con una o más de sus previsiones o conceptos. En cada sesión del Grupo de Trabajo, los gobiernos introducen más y más lenguaje alternativo para discutir en las reuniones, con paréntesis que indican donde no están de acuerdo.

Los pueblos indígenas son consecuentes en su apoyo a la adopción del texto de la Subcomisión, y consideran fútiles y frustrantes los intentos de volver a redactarlo, teniendo en cuenta que los mismos gobiernos participaron activamente en la preparación del texto original. Sin embargo, enfrentados con las implicaciones políticas y prácticas de la actual situación, muchas organizaciones de pueblos indígenas están seriamente preocupadas sobre qué medidas tomar para asegurar que la Declaración final, cuando sea adoptada, sea un instrumento fuerte y proteja sus derechos e intereses como pueblos distintos. Conscientes de que cualquier acuerdo para intentar volver a

889

redactar el texto puede conducir a enmiendas y/o alteraciones que pueden resultar en un debilitamiento del mismo, los pueblos indígenas han mencionado los siguientes criterios como esenciales:

El Proyecto de Declaración debe ser encarado sobre la base de una muy alta presunción de la integridad del texto existente. Para rebatir esta presunción, cualquier propuesta debe satisfacer los siguientes criterios:

1. *Debe ser razonable.*
2. *Deber ser necesaria.*
3. *Debe mejorar y fortalecer el texto existente.*

Además, toda propuesta debe ser consecuente con los principios fundamentales de:

1. *Igualdad.*
2. *No discriminación.*
3. *La prohibición de la discriminación racial*[2].

Esto fue introducido por primera vez por el Comisionado de los Aborígenes e Isleños del Estrecho Torres en 1998, y desarrollado por el Servicio Legal Maorí en 1999. En la sesión de 2002, fue también planteado por una serie de organizaciones indígenas, incluyendo a la Conferencia Circumpolar Inuit y la Organización de Mujeres Indígenas Africanas (Africa), CAPAJ (Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos), La Red Indígena de Información (Kenia), el Consejo Nacional Metis, el Proyecto Rural Integrado Ogiek (Kenia) y el Consejo Saami que hizo la siguiente declaración:

> *Por lo menos, se debe garantizar estos principios y criterios específicos si queremos hacer avanzar las negociaciones y el diálogo constructivo con los gobiernos relativos a la redacción sustancial de los artículos del Proyecto de Declaración... estas negociaciones deben realizarse en un foro plenario, abierto, y no a puertas cerradas, y deben ser consecuentes con nuestras demandas de participación directa, significativa y plena.*

Invitación al Caucus Indígena: Otro acontecimiento es que los gobiernos reafirmaron que la invitación previa a que los pueblos indígenas asistieran a sus reuniones todavía estaba abierta. Después de consultas, el caucus indígenas decidió no aceptar la invitación, porque no quería desviar tiempo, atención y recursos

de las sesiones plenarias, pero dejó abierto al criterio de las organizaciones indígenas en particular decidir asistir si así lo deseaban.

Derechos colectivos

El Proyecto de Declaración contiene muchos artículos que tienen referencias específicas o implícitas a los derechos colectivos y a los aspectos colectivos de los derechos indígenas como el derecho de autodeterminación, y es un elemento integral de cualquier discusión sobre los derechos de los pueblos indígenas. Por lo tanto, este es un concepto fundamental en las discusiones. Como señaló un representante bereber:

> *Los derechos colectivos contienen el derecho a la identidad cultural, el derecho a proteger y enseñar la lengua materna en todos los niveles, del primario al universitario; derechos a la tierra y derechos forestales; y el derecho de autodeterminación... el Convenio No. 169 es el primer paso para reconocer los derechos colectivos, las Declaraciones adoptadas en [la Conferencia Mundial sobre Derechos Humanos], Viena y [la Conferencia Mundial contra el Racismo], Durban, son otros, pero la adopción de esta Declaración sobre los Derechos de los Pueblos Indígenas será un paso necesario para el reconocimiento de los derechos de los pueblos indígenas.*

Los delegados indígenas se refirieron a los instrumentos internacionales existentes que reconocen los derechos colectivos como los dos convenios internacionales (ICCPR y ICESR), el Convenio Internacional sobre la Eliminación de la Discriminación Racial, el Convenio No. 169 de la OIT sobre Pueblos Indígenas y Tribales, 1989, la Declaración de la UNESCO sobre Raza y Prejuicio Racial, 1978, la Carta Africana de Derechos Humanos y de los Pueblos, 1981, el Convenio sobre la Biodiversidad, la Declaración Universal sobre la Diversidad Cultural (UNESCO 2001), entre otros.

Una serie de gobiernos, como Ecuador, Finlandia, Guatemala, Noruega, Perú, la Federación Rusa, Suiza y Venezuela declararon que reconocían los derechos colectivos y señalaron la legislación nacional, incluyendo previsiones constitucionales, que reconoce los derechos colectivos de los pueblos indígenas. Noruega también se remitió al hecho de que a través de su ratificación del Convenio No. 169 de la OIT, reconocía los derechos colectivos de los pueblos indígenas. Guatemala, también signataria del Convenio No. 169 de la OIT, afirmó su posición:

691

Para Guatemala, los pueblos indígenas y sus derechos colectivos son una realidad innegable, y su derecho de autodeterminación junto con el derecho al desarrollo son dos derechos humanos colectivos que son fundamentales, y deben constituir la base de la Declaración.

El Reino Unido reconoció solamente derechos individuales y referidos a las minorías. Australia, Canadá y Nueva Zelanda, plantearon el tema de posibles conflictos con los derechos individuales:

Australia considera que los derechos humanos son usualmente derechos individuales en vez de derechos grupales o colectivos. Sin embargo, Australia no ha tenido problemas con el concepto de derechos colectivos tal como están reflejados en nuestra legislación y política nacional relativa a los pueblos indígenas y nuestro apoyo a las Declaraciones de la ONU no obligatorias sobre los derechos de las minorías nacionales, étnicas, religiosas o lingüísticas. Dentro de Australia hemos reconocido que ciertos derechos pueden ser ejercidos individualmente y/o colectivamente. Entre estos están, por ejemplo, ciertos derechos de los pueblos indígenas que entran en la rúbrica de 'título nativo'. La legislación nativa ha establecido claramente derechos colectivos para pueblos indígenas bajo el sistema legal australiano... Australia reconoce que en algunas instancias puede ser necesario examinar y resolver la posibilidad de conflicto entre derechos colectivos e individuales. Sea como sea, Australia no ve una necesidad de cuestionar seriamente la noción de derechos colectivos como concepto general.

Nueva Zelanda reconoció los derechos colectivos en el Proyecto de Declaración, pero sobre la base de artículo por artículo. Reconoció derechos colectivos en la legislación nacional –el Tratado de Waitangi reconoció los derechos individuales y colectivos de los maorí- pero deseaba equilibrar los derechos colectivos con los intereses del gobierno y de los individuos.

La posición de Canadá está resumida en la siguiente declaración:

La Constitución canadiense reconoce y afirma los derechos aborígenes provenientes de tratados existentes o creados después de abril, 1982... Algunos de estos derechos, como los derechos a la caza o a la pesca, aunque son colectivos, pueden ser ejercidos por los individuos.

La posición de Canadá, como se expresó previamente, es que el reconocimiento en el Proyecto de Declaración sobre los Derechos de los Pueblos Indígenas como derechos colectivos, debe ser considerado artículo por artículo... La delegación canadiense puede apoyar la inclusión de normas en el Proyecto de Declaración, como derechos colectivos a la tierra o autogobierno cuando estos derechos:

- *Sean de importancia fundamental para los pueblos indígenas;*
- *No nieguen derechos individuales o de terceras partes, y;*
- *Puedan ser expresados lo suficientemente claro para que puedan concretarse en derechos y obligaciones prácticos e identificables.*

Esta referencia a derechos de terceras partes generó mucho debate y discusión. Los representantes indígenas consideraron esto como una forma de incluir intereses estatales y corporativos en el Proyecto de Declaración, y argumentaron que esto frustraría el propósito principal de redactar una Declaración sobre los Derechos de los Pueblos Indígenas. La declaración tenía el objetivo de llenar el actual vacío que existe en la protección de los derechos de los pueblos indígenas. Como forma de avanzar, Guatemala propuso la inclusión de un artículo separado sobre derechos de terceras partes. Los pueblos indígenas no estuvieron de acuerdo:

> *Son los pueblos indígenas quienes necesitan ser protegidos de los estados e intereses corporativos debido a los procesos históricos de la colonización, externa e interna, neo-colonización y globalización. Los intereses de terceras partes* ***no*** *deberían ser incluidos en esta Declaración porque generalmente no se hace referencia a ellos en declaraciones que contienen afirmaciones de principios morales, ni es práctica corriente.* (Anexo II: Propuestas de los Representantes Indígenas al Informe del Grupo de Trabajo, 2002)

El Presidente, en su resumen de la discusión, señaló el consenso general sobre la existencia de derechos colectivos. Sin embargo, como no había acuerdo sobre cuáles derechos eran colectivos y cuáles individuales en el Proyecto de Declaración, la próxima sesión del Grupo de Trabajo debería examinar los artículos que tratan sobre los derechos colectivos.

Tierra, territorios y recursos naturales

Esta discusión está relacionada con la previa sobre derechos colectivos, porque los derechos de los pueblos indígenas a tierra, territorios y recursos naturales son derechos disfrutados y ejercidos en forma colectiva. Los pueblos indígenas describieron la degradación de sus derechos a la tierra por la colonización, la militarización, la exploración y la explotación de recursos forestales y minerales. Como lo describió un representante de Chittagong Hill Tracts:

> *Nuestros derechos a nuestras tierras y territorios son interpretados hoy por los gobiernos de los estados sobre la base de tratados o leyes*

que nos fueron impuestos bajo coerción. A veces, los gobiernos nos niegan nuestros derechos de propiedad alegando que nunca usamos la tierra como mercancía para comprar y vender cuando acordamos tratados. Sin embargo, muchos estados utilizan hoy los minerales de esas tierras aunque los estados no mencionaron los derechos al subsuelo cuando se negociaron los tratados pertinentes. Es una situación de "la cabeza gana, la cola pierde".

El Centro Indio de Recursos Legales informó al Grupo de Trabajo sobre la reciente decisión de la Corte Interamericana de Derechos Humanos en el Caso de la Comunidad Mayagma (Sumo) Awas Tingni vs. Nicaragua, del 31 de agosto de 2001 que concluyó que:

...los pueblos indígenas tienen, conforme al derecho internacional, derechos colectivos a las tierras y recursos naturales que han usado y ocupado tradicionalmente. La Corte falló además que los gobiernos violan los derechos humanos de los pueblos indígenas cuando no toman medidas legislativas o administrativas afirmativas para proteger y aplicar estos derechos de propiedad y cuando autorizan el acceso a tierras y recursos indígenas sin consultar con los pueblos indígenas u obtener su consentimiento.

Algunos gobiernos, incluyendo a Australia y Francia, aclararon que aunque reconocían los derechos de los pueblos indígenas a sus tierras, esto tenía que considerarse dentro del contexto de la protección ambiental, restitución y compensación. Australia describió el proyecto existente como un proyecto que contenía problemas genuinos y conceptuales que debían ser tratados, particularmente con referencia a los artículos 26 y 27 de la Declaración que especificaban "derechos exclusivos" de los pueblos indígenas a sus tierras y recursos naturales y que, por lo tanto, podrían negar derechos de terceras partes. Perú quería una mayor aclaración de los términos "uso y posesión" y también expresó preocupación de que podrían surgir ciertos conflictos de intereses. Nueva Zelanda se refirió al Tratado de Waitangi, que reconocía los derechos a la tierra de los maorí, y sugirió que los diferentes artículos del Proyecto de Declaración relacionados con los derechos a la tierra fueran agrupados en un artículo global.

Los representantes indígenas hicieron referencias específicas al derecho nacional e internacional que reconocían los derechos indígenas a la tierra, incluyendo el Convenio No. 169 de la OIT, el artículo 5 del Convenio sobre la Eliminación de la Discriminación Racial, el artículo 27 del Pacto Internacional sobre Derechos Civiles y Políticos. Dentro de este contexto, los representantes indígenas también llamaron la atención sobre los comentarios generales, así como las obser-

vaciones finales del Comité de Derechos Humanos de la ONU sobre Canadá, México y Noruega, que establecían que el derecho de autodeterminación, y consecuentemente el derecho en general a los derechos humanos, también se aplica a los pueblos indígenas, y era evidente que las observaciones finales sobre Canadá incluían el derecho a su tierra y recursos naturales (Documentos ONU CCPR/C/79/Add. 112, CCPR/C/79/Add. 109 y CCPR/C79/Add. 105).

El Presidente señaló que había un consenso general sobre la relación especial de los pueblos indígenas con sus tierras pero que algunos estados deseaban más aclaración sobre aspectos específicos de algunos artículos. Describió este diálogo como un paso importante en el proceso.

Discusión sobre artículos específicos

Artículo 13

Esta discusión ya había comenzado en la sesión pasada del Grupo de Trabajo y estaba basada en un documento gubernamental con un lenguaje alternativo para el artículo 13 relacionado al derecho de los pueblos indígenas a:

> *[M]anifestar, practicar, desarrollar y enseñar sus tradiciones espirituales y religiosas, costumbres y ceremonias; el derecho a mantener, proteger y tener acceso en privacidad a sus sitios religiosos y culturales; el derecho al uso y control de los objetos ceremoniales; y el derecho a la repatriación de restos humanos.*

Canadá leyó los comentarios adjuntos al documento y aclaró que algunos gobiernos están dispuestos a aceptar el texto original (Guatemala, Finlandia, México, Noruega, Suiza y Venezuela), mientras que otros tenían problemas con elementos de la terminología. Sin embargo, se subrayó que ningún estado había negado los términos y conceptos de este artículo tal como estaba redactado actualmente; simplemente que algunos mencionaron la necesidad de que se trataran y aclararan. Algunos gobiernos sugirieron un nuevo párrafo general sobre derechos de terceras partes que dice lo siguiente:

> *La implementación de los derechos de esta Declaración tendrá en cuenta las medidas necesarias para proteger la seguridad pública, el orden, la salud o la moral o los derechos y libertades fundamentales de otros.*

La inclusión de derechos de terceras partes fue apoyada por Canadá, Nueva Zelanda, el Reino Unido y los EE.UU.. Los EE.UU. también

apoyaron la referencia a la "seguridad pública, el orden, la salud o la moral, o las libertades fundamentales de otros".

Otras redacciones alternativas propuestas incluían la inserción de la frase "de acuerdo con las normas de derechos humanos" (Finlandia, Francia y Nueva Zelanda), y que también debería estar "sujeto a la legislación nacional" (Australia y Canadá). Sin embargo, Australia, Canadá y Nueva Zelanda aclararon que apoyaban los principios subyacentes que guiaban el artículo 13, pero deseaban que algunos temas fueran aclarados. Guatemala y Suiza objetaron firmemente la referencia a la legislación nacional como "inaceptable", como también lo hicieron Finlandia y Noruega. Noruega expresó que esa referencia socavaría el objetivo general del proceso que era elaborar normas universales sobre los derechos de los pueblos indígenas.

El Consejo Indio de Tratados se opuso firmemente a basar la discusión del Grupo de Trabajo en otra cosa que no fuera el texto del Proyecto de Declaración redactado por la Subcomisión. El documento bajo consideración por el Grupo de Trabajo era del año pasado y no reflejaba la realidad actual porque las posiciones de los gobiernos podían haber cambiado, como en el caso de México que ahora estaba dispuesto a adoptar la Declaración tal como estaba redactada originalmente. Además, este procedimiento de introducir documentos que no indicaban cuáles posiciones sostenían cuáles gobiernos dificultaba a los pueblos indígenas identificar a quién dirigirse.

Los pueblos indígenas se opusieron firmemente a las enmiendas, incluyendo la referencia a los derechos de terceras partes como se mencionó anteriormente, y a la "legislación nacional" como lo resumió el delegado maorí de Te Kawau Maro:

> *La legislación nacional debería ajustarse al Derecho Internacional; de otra manera sería estar en contravención con un Principio General del Derecho Internacional. Sr. Presidente, el Derecho Internacional no debería estar sometido a la legislación nacional, si esa afirmación es rechazada entonces nos deberíamos ir todos a casa ahora... no tiene objeto seguir. Es precisamente debido a que la legislación nacional no ha otorgado una protección adecuada a los Pueblos Indígenas que venimos a este foro internacional. Pongamos en claro la relación entre la legislación nacional y el derecho internacional. La legislación nacional es el vehículo para adoptar el derecho internacional e implementarlo en los sistemas legales nacionales. El derecho internacional influye, guía [y] dirige la legislación nacional. Se sugiere que el término 'sometido a la legislación nacional' dentro de un contexto internacional es una frase incorrecta y debería dejar de usarse.*

El representante de la Conferencia Circumpolar Inuit subrayó:

> *...el propósito de este proceso es establecer normas internacionales relativas a los derechos distintos de los pueblos indígenas. La introducción de este lenguaje podría disminuir potencialmente nuestro derecho a mantener y tener acceso a nuestros sitios religiosos y sagrados. Cualquier recomendación de los estados basada en legislaciones nacionales debería ser consecuente con la legislación internacional de derechos humanos relativa a los pueblos indígenas y otros.*

El Presidente agregó que había una convergencia de opinión de los pueblos indígenas, pero que los gobiernos tenían objeciones centradas en tres temas importantes: referencias a (i) normas de derechos humanos; (ii) legislación nacional y (iii) intereses de terceras partes. El representante de AIPP (Pacto de los Pueblos Indígenas de Asia) expresó una opinión compartida por otras organizaciones indígenas:

> *...las dificultades expresadas por algunos gobiernos para adoptar el Artículo 13 tal como está en el texto no son convincentes. Independientemente de cuán genuinas sean sus dificultades o aprehensiones, es simplemente inapropiado tratarlas en esta Declaración. Hay otras formas de hacerse cargo de sus preocupaciones, "como sopesar los derechos indígenas con respecto a las responsabilidades estatales". Hay mecanismos separados para tratarlas, o se pueden crear mecanismos separados para este propósito... Por lo tanto, exhortamos a estos gobiernos que reconsideren en forma expeditiva su posición.*

Artículo 6

El texto original es el siguiente:

> *Los pueblos indígenas tienen el derecho colectivo a vivir en libertad, paz y seguridad como pueblos distintos y a gozar de plenas garantías contra el genocidio o cualquier otro acto de violencia, comprendida la separación de los niños indígenas de sus familias y comunidades, bajo cualquier pretexto.*
>
> *Además, tienen derechos individuales a la vida, la integridad física y mental, la libertad y la seguridad de la persona.*

El documento de discusión de los gobiernos incluía redacciones alternativas que se referían al Convenio sobre el Genocidio, de 1948, y proponía un artículo separado sobre los derechos de los niños indígenas, incluyendo una referencia al Convenio sobre los Derechos del Niño.

La discusión se centró en el genocidio, la integridad física y mental, los niños y referencias a convenios específicos. Los siguientes estados estaban dispuestos a aceptar el artículo tal como estaba redactado originalmente: China, Dinamarca, Finlandia, Guatemala, México, Noruega, Perú y Suiza. No obstante, Canadá cuestionó el concepto de "integridad mental" porque no estaba definida en el derecho internacional, lo mismo hicieron Australia y Nueva Zelanda, aunque la última subrayó que podía apoyar este concepto. Noruega apoyó el mantenimiento de "integridad física y mental" y se refirió al Artículo 1 del Convenio contra la Tortura que ya incluye este concepto.

Aunque Australia apoyaba los principios subyacentes del artículo, creía que podía ser fortalecido, y estaba de acuerdo con Canadá y Nueva Zelanda con una redacción alternativa que incluyera referencias específicas a la Convención sobre Genocidio. Japón también prefería la redacción alternativa propuesta en el documento gubernamental. Suecia apoyó los esfuerzos para fortalecer el texto y podía aceptar "pueblos indígenas" pero tenía reservas sobre derechos colectivos *per se*. Apoyó el texto alternativo con referencia al Convenio sobre el Genocidio, como también lo hizo Dinamarca. Los EE.UU. consideraban que el actual texto no reflejaba el derecho internacional sobre el genocidio, y apoyó el texto alternativo que refería específicamente al Convenio sobre el Genocidio.

Algunos estados estaban preocupados porque la redacción original sobre la separación de niños indígenas era demasiado amplia y podía incluir la adopción o transferencia de custodia de niños indígenas para sus mejores intereses. Australia, China, Dinamarca, Guatemala, Perú, Nueva Zelanda, Noruega y Suiza, entre otros, declararon que podían apoyar un nuevo artículo separado (nuevo artículo 6.1) sobre los derechos de los niños indígenas.

Los representantes indígenas no estaban de acuerdo con las referencias a convenios específicos y no creían que fortalecieran al texto de ninguna manera, al contrario. Un representante indígena batwa describió el genocidio de tutsi en la República Centroafricana y la necesidad de proteger a los pueblos indígenas para que esto no vuelva a suceder en el futuro. El representante de Ka Lahui Hawaii aclaró que si la Declaración incluía referencias a convenios específicos como el Convenio sobre el Genocidio o el Convenio sobre los Derechos del Niño, esto disminuiría severamente su ámbito porque entonces sería aplicable sólo a aquellos países que han ratificado los convenios pertinentes. Los EE.UU., por ejemplo, que son bien conocidos por no ratificar normas internacionales, no podrían entonces ser hechos responsables por convenios específicos a los que no habían adherido. Con referencia a las discusiones anteriores sobre derechos colectivos y la negativa de algunos estados a reconocer este derecho fundamen-

tal para los pueblos indígenas, el Convenio sobre el Genocidio contiene referencias a los derechos colectivos. Guatemala compartió la preocupación de los pueblos indígenas y declaró que sería perjudicial incluir referencias a convenios específicos.

Había una referencia en el texto alternativo: "integrado con otros habitantes del estado". Los representantes indígenas se opusieron firmemente a esto, incluyendo los representantes de Kuna Yala y Jharkand quienes describieron los procesos históricos de asimilación e integración de los pueblos indígenas. El representante de la Organización para los Derechos Humanos de Jharkand declaró:

> *...históricamente, han sido los que nos dominaban que no querían integrarse. Se ocuparon de homogeneizarnos, explotarnos ... incluso de cometer genocidio. En India, durante unos 300 años, la tendencia ha sido a no integrarse. Ahora cuando los pueblos indígenas dicen "ya basta" – nosotros vivimos nuestras vidas- ustedes dicen intégrense. La propuesta sobre integración es absurda, incluso históricamente hablando.*

Artículo 9

El texto original del artículo dice lo siguiente:

> *Los pueblos y las personas indígenas tienen derecho a pertenecer a una comunidad o nación indígena, de conformidad con las tradiciones y costumbres de la comunidad o nación de que se trate. No puede resultar ninguna desventaja del ejercicio de ese derecho.*

La discusión se centró sobre la identidad, "el derecho a pertenecer", "naciones", la posibilidad de conflictos entre derecho consuetudinario y normas de derechos humanos y discriminación/desventaja.

Algunos gobiernos aclararon que estaban dispuestos a adoptar el texto original, incluyendo a Guatemala, Noruega, Suecia y Suiza, entre otros. Nueva Zelanda expresó que podía apoyar la primera frase. Australia tenía problemas específicos con el texto original, incluyendo el término "naciones" que no era usado en el contexto nacional, "ni es un término que haya sido asociado tradicionalmente con los pueblos indígenas en Australia. Su adopción en un documento aspirativo como el Proyecto de Declaración podría entonces plantear cuestiones y expectativas sobre la integridad territorial y constitucional...". El representante de Ka Lahui Hawaii señaló instrumentos internacionales que trataban el concepto de "nación" incluyendo la Declaración sobre el Otorgamiento de la Independencia a Países y Pueblos Coloniales, 1960, mientras que otros llamaron la atención sobre acuerdos y tratados concluidos entre estados y

899

pueblos indígenas como naciones y pueblos con sus propios derechos a tierra, territorios y recursos naturales, p. ej., en los EE.UU., Nueva Zelanda y en otras partes del mundo.

En respuesta a la afirmación de Canadá que no reconocía un "derecho de pertenencia" porque no existía en el derecho internacional, varios participantes, incluyendo al representante de la Conferencia Circumpolar Inuit, recordaron el mandato del Grupo de Trabajo que era adoptar nuevas normas sobre pueblos indígenas y que limitar la declaración a las normas existentes sería frustrar toda la labor. No obstante, Canadá apoyó "la libertad de los pueblos indígenas e individuos a pertenecer a una comunidad indígena o nación de acuerdo con la tradición y costumbres de la comunidad o nación pertinente". Suecia retiró una propuesta para incluir "cuando esas tradiciones y costumbres sean consecuentes con las normas internacionales de derechos humanos" después de escuchar las opiniones de los representantes indígenas, y tomando en cuenta que sus preocupaciones también eran satisfechas por los artículos 1 y 45 de la Declaración, así como todo el proyecto de Declaración en su conjunto. Australia y Canadá propusieron la eliminación de la segunda frase (también con el apoyo de Nueva Zelanda) porque el tema de la protección contra la desventaja estaba cubierto en otros artículos y podía ser considerado como una prohibición a programas de acción afirmativa.

El Presidente notó que había una gran convergencia de opinión pero que algunos conceptos no estaban lo suficientemente claros para llegar a un consenso, y que por consiguiente tenían que ser analizados con más profundidad.

Artículo 7

Hubo un breve debate general sobre el Artículo 7:

> *Los pueblos indígenas tienen el derecho colectivo e individual a no ser objeto de etnocidio y genocidio cultural, en particular a la prevención y la reparación de:*
>
> *a) todo acto que tenga por objeto o consecuencia privarlos de su integridad como pueblos distintos o de sus valores culturales o su identidad étnica;*
>
> *b) todo acto que tenga por objeto o consecuencia enajenarles sus tierras, territorios o recursos;*
>
> *c) Toda forma de traslado de población que tenga por objeto o consecuencia la violación o el menoscabo de cualquiera de sus derechos;*
>
> *d) Toda forma de asimilación e integración a otras culturas o modos de vida que les sean impuestos por medidas legislativas, administrativas o de otro tipo;*

e) toda forma de propaganda dirigida contra ellos.

Los temas principales de discusión fueron el genocidio y el etnocidio, desposeimiento de la tierra, transferencia de población (reasentamiento forzado), asimilación y propaganda negativa. No circuló ningún documento gubernamental sobre este artículo. Guatemala, México, Noruega y Suiza estaban de acuerdo en apoyar el artículo 7 tal como estaba redactado originalmente.

Guatemala apoyó firmemente la referencia al etnocidio en el artículo original, porque era de importancia vital dada la práctica histórica y continua cometida contra los pueblos indígenas en diferentes partes del mundo. Además, esto era necesario para llenar un vacío porque las actuales definiciones de genocidio no cubren completamente este término. El representante del Foro de los Pueblos Indígenas de Bangladesh estuvo de acuerdo con esta posición y dio un ejemplo del etnocidio cultural que tiene lugar en su país, incluyendo la política de transferencia de población implementada en Chittagong Hill Tracts en los años 80, con el objetivo de diluir la composición indígena del área. Esto fue fortalecido por los comentarios del representante de Derechos y Democracia quien se refirió a la definición de genocidio en el Estatuto de Roma para una Corte Criminal Internacional que tendrá jurisdicción sobre genocidio, crímenes de guerra y crímenes contra la humanidad:

> *En el estatuto y elementos del crimen, ICC elaboró cómo el crimen de genocidio puede ser cometido en cinco formas diferentes. Estas... refieren al art. 6 (a) (b) (c) (d) y (e)... En todos los casos, el crimen tiene elementos individuales y colectivos... el art.7 del Proyecto de Declaración sobre los Derechos de los Pueblos Indígenas es totalmente compatible con el Estatuto de Roma...*

Canadá hizo algunos comentarios generales indicando que necesitaba examinar más la prohibición sobre "integración" porque este concepto difiere de otros conceptos perniciosos para los pueblos y culturas indígenas, como la "asimilación". Aunque afirmaba que la protección contra el genocidio era esencial para la continua existencia de las comunidades y culturas indígenas, Canadá cuestionaba el término "genocidio cultural" porque no se encuentra en el Estatuto de Roma o en sus Elementos del Crimen.

Noruega aclaró que no tenía mayores problemas con el artículo 7, incluyendo la referencia al etnocidio y el genocidio cultural entendiendo que éste incluía la asimilación forzada y la destrucción de las culturas indígenas. Aunque estos términos todavía no estaban aceptados en el derecho internacional, este era un proceso de elaboración

901

de nuevas normas sobre pueblos indígenas y, por lo tanto, era apropiado introducir nuevos conceptos y términos. Esta opinión fue compartida por todos los pueblos indígenas como lo expresó el representante de CAPAJ (Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos):

> *Aquí, se refiere al despojo de las tierras, territorios y recursos naturales indígenas como una de las formas de provocar el etnocidio y el genocidio cultural de los pueblos indígenas. No se trata de crear un nuevo derecho 'exclusivo' para los pueblos indígenas, sino de llenar un vacío en el marco normativo internacional de los derechos humanos para proteger la supervivencia de pueblos indígenas que no gozan en el presente de ninguna protección colectiva que garantice su continuidad.*

El Presidente propuso que las discusiones podían continuar en la próxima sesión del Grupo de Trabajo y pidió a los gobiernos que presentaran sus propuestas en esa oportunidad.

Artículo 10

El artículo original del Proyecto de Declaración dice lo siguiente:

> *Los pueblos indígenas no serán desplazados por la fuerza de sus tierras o territorios. No se procederá a ningún traslado sin el consentimiento libremente expresado y con pleno conocimiento de los pueblos indígenas interesados, y previo acuerdo sobre una indemnización justa y equitativa y, siempre que sea posible, con la posibilidad de regreso.*

Los temas principales durante esta discusión estuvieron centrados en los temas del traslado forzoso y la reubicación; libre e informado consentimiento; compensación justa y equitativa; y la opción de retornar. La discusión, como en todos los artículos precedentes, estuvo basada en el artículo original con referencias al documento de discusión de los gobiernos.

Una serie de estados estaban dispuestos a aceptar el artículo en su redacción original, como Guatemala, México, Noruega y Suiza; mientras que Cuba afirmó su apoyo a los derechos colectivos de los pueblos indígenas. Aunque Canadá aceptó el principio que los pueblos indígenas e individuos no deben ser trasladados arbitrariamente de sus tierras, encontraba que el texto era ambiguo y necesitaba ser aclarado para incluir situaciones en que el traslado es requerido, por ejemplo, por razones de salud o seguridad. Australia estuvo de acuer-

902

do, y también tenía problemas con el requisito de acuerdo sobre compensación previo al traslado pues esto no era posible en aquellos casos que pueden requerir una acción rápida. Muchos representantes indígenas describieron sus experiencias prácticas con el reasentamiento forzado sin compensación y como resultado de políticas o proyectos como en Chittagong Hill Tracts, Bangladesh (represa, y afluencia de colonos), y la comunidad Likanantay, en el norte de Chile como resultado de minas de cobre, entre otras situaciones del mismo tipo.

Nueva Zelanda interpretó que el artículo significaba que no debería haber reasentamiento forzoso y deseaba incluir el derecho a la restitución porque a veces la compensación era entendida sólo en su connotación financiera. Esta propuesta de incluir reparación por el reasentamiento forzoso fue también apoyada por Guatemala por tener un ámbito más amplio que la compensación. Noruega también hizo énfasis en la necesidad de tomar en cuenta el valor particular de la relación especial que tienen los pueblos indígenas con sus tierras y territorios en este contexto. Los pueblos indígenas afirmaron este enfoque, incluyendo el representante de las Primeras Naciones del Tratado 8 de Alberta quien aclaró:

> *la compensación por sí misma puede no proveer el remedio o reparación adecuados. Esto se debe a que nuestros pueblos poseen una relación especial, única, particular y espiritual con la tierra que necesita ser restaurada y para lo cual ningún remedio o reparación que no sea la restauración puede ser adecuado.*

Guatemala destacó que había acuerdo general en los temas sustanciales del artículo 10 y no podía ver problemas en adoptar el artículo.

Con esto se cerraron las discusiones sobre los artículos específicos.

Informe y planes de trabajo futuro

En la tarde del último día, el Grupo de Trabajo se reunió para leer y aceptar el informe. Este incluía los siguientes documentos: (a) el informe de la reunión con un sumario de las discusiones y cinco documentos: Anexo 1 – Una compilación de enmiendas propuestas por algunos estados para discusiones futuras basadas en el texto de la Subcomisión (un nuevo título para reflejar más exactamente que algunos estados puedan aceptar la redacción original); Anexo 2 – Propuestas de los representantes indígenas que contenían las opiniones y posiciones de los pueblos indígenas sobre los temas discutidos; Anexo 3 – Comentarios de la ONG Movimiento Indio "Tupac

903

Amaru"; Anexo 4 – La Propuesta mexicana de un Buró; y Anexo 5 – Propuesta de la delegación de Guatemala para facilitar el consenso sobre varios artículos del Proyecto de Declaración (un párrafo separado sobre derechos de terceras partes)[3] .

Mientras que leían el proyecto de informe, y durante la discusión que siguió cuando el informe fue leído y aprobado cláusula por cláusula, los representantes indígenas expresaron su preocupación por la inclusión en el informe de los documentos de discusión de los gobiernos. Cuestionaron este procedimiento por no ser un verdadero reflejo del debate. Los representantes indígenas subrayaron que esto era contrario al espíritu de diálogo y participación igualitaria sobre el que estaba basado el Grupo de Trabajo, y no incluía el intercámbio de opiniones que tuvo lugar en la misma reunión en un espíritu de diálogo positivo y constructivo. Noruega y algunos otros gobiernos destacaron que el informe debería incluir también los argumentos para la retención del texto original, aclarados por muchos gobiernos durante las discusiones, para brindar una perspectiva más equilibrada. México y Guatemala también plantearon la cuestión de si en el futuro el informe debería identificar las posiciones sostenidas por estados específicos en vez de la práctica actual de usar el término general anónimo de "estados" con el prefijo de "algunos", "muchos", "unos pocos", etc.

La fecha propuesta para la próxima sesión del Grupo de Trabajo es del 2 al 13 de diciembre de 2002. Se acordó que para la próxima sesión el Grupo de Trabajo consideraría los artículos 3, 31, 36, 25-30 sobre tierras y completaría la discusión sobre los artículos 7, 8 y 11, pendientes desde la primera sesión.

Conclusión

Al final de la reunión, el Grupo de Trabajo sobre el proyecto de declaración no había adoptado ni un solo artículo. Sin embargo, se discutieron temas sustanciales y las posiciones de los estados particulares quedaron más en claro durante esta sesión. Un aspecto positivo de este proceso es que los pueblos indígenas fueron capaces de entrar en diálogo y discusión con los gobiernos de una manera constructiva, y se esforzaron por tratar y disipar los problemas.

Lo que parece más y más incierto es que la Declaración pueda ser adoptada dentro del marco del Decenio, y si esto no sucede, cuál será el próximo paso. Esa es la pregunta que tienen que hacerse los pueblos indígenas y aquellos estados que sinceramente desean ver la adopción de una Declaración sobre los Derechos de los Pueblos Indígenas.

904

Notas

1 **Nota del editor**: Este articulo es una versión reducida de la contribución original de la Sra. Chandra Roy. Debido a la limitación de espacio lamentamos vernos obligados a no incluir la parte introductoria del articulo original donde la autora nos ofrece una información muy relevante sobre los antecedentes de este grupo de trabajo, participación indígena, metodología de trabajo etc. La versión completa de este articulo sin embargo está a disposición de los interesados en nuestra página web: www.iwgia.org.

2 ATSIC 2001: *Setting International Standards: An analysis of the United Nations Declaration on the Rights of Indigenous Peoples and the first six sessions of the Commission on Human Rights Working Group.* Preparado por la Comisión para los Aborígenes e Isleños del Estrecho Torres por Sarah Pritchard, junio de 2001, 3a edición, pág. 34.

3 Por más información ver el informe del Grupo de Trabajo en: www.unhchr.ch/huridoca.nsf/Documents?openFrameset

EL FORO PERMANENTE PARA LAS CUESTIONES INDÍGENAS

El Consejo Económico y Social de la ONU (ECOSOC) decidió establecer el Foro Permanente para las Cuestiones Indígenas en el mes de Julio del año 2000, sobre la base de una recomendación de la Comisión de Derechos Humanos. Esta decisión marcó un hito fundamental en la larga lucha que los pueblos indígenas han venido llevando durante las últimas décadas para dar a conocer sus necesidades y problemas y conseguir una posición dentro de la comunidad internacional.

El Foro Permanente es un organismo único e innovador que integrará formalmente a los pueblos indígenas y sus representantes en la estructura de las Naciones Unidas, siendo la primera vez en la historia que se otorga paridad a representantes de estados y a actores no-estatales en un organismo representativo permanente de las Naciones Unidas.

En ediciones anteriores del *"El Mundo Indígena"* se ha dado información detallada de los debates mantenidos en el proceso de negociación entre los representantes de los pueblos indígenas y las delegaciones gubernamentales para establecer un Foro Permanente dentro del sistema de las Naciones Unidas que respondiera a las deman-

905

das y necesidades de los pueblos indígenas. En esta edición volveremos a hacer un breve resumen del proceso histórico que llevó al establecimiento del Foro, y una breve descripción de sus características para pasar a relatar los acontecimientos que han tenido lugar durante este último año, con especial referencia a los procesos indígenas para la nominación de candidatos.

Descripción del Foro Permanente

El Foro Permanente para la Cuestiones Indígenas está situado a un alto nivel dentro del sistema de Naciones Unidas, siendo un organismo directamente dependiente del Consejo Económico y Social (ECOSOC).

El Foro Permanente para las Cuestiones Indígenas está integrado por **16 miembros**, ocho de ellos nominados por los gobiernos y los otros ocho nombrados por el Presidente de ECOSOC sobre la base de amplias consultas con organizaciones y grupos indígenas. El proceso de selección deberá tomar en cuenta los principios de representatividad y la diversidad y distribución geográfica de los pueblos indígenas.

Todos los miembros del Foro actúarán en forma personal como expertos independientes sobre temas indígenas durante un período de tres años con la posibilidad de ser reelectos o vueltos a nombrar por un período más.

El mandato del Foro aborda de forma amplia todas las cuestiones indígenas relativas al desarrollo económico y social, derechos humanos, medioambiente, cultura, educación y salud.

Específicamente el Foro Permanente tiene que :

- Suministrar asesoría especializada y recomendaciones sobre cuestiones indígenas al Consejo Económico y Social de las naciones Unidas.
- Hacer tomar conciencia y promover la integración y coordinación de las actividades relacionadas con temas que afecten a los pueblos indígenas dentro del sistema de Naciones Unidas.
- Preparar y divulgar información sobre cuestiones indígenas

El Foro celebrará una sesión anual de diez días laborables en la Sede de las Naciones Unidas en Ginebra o en la Sede Central de las Naciones Unidas en Nueva York o en cualquier otro lugar que el Foro Permanente decida, de acuerdo con los procedimientos y reglamentaciones financieras existentes de las Naciones Unidas.

Las reuniones serán abiertas como las del Grupo de Trabajo sobre Poblaciones Indígenas. Los Gobiernos, las organizaciones intergu-

bernamentales, las ONGs así como las organizaciones de pueblos indígenas podrán participar como observadores en el Foro.

El Foro Permanente presentará un informe anual al Consejo de ECOSOC sobre sus actividades, incluyendo recomendaciones, para su aprobación; el informe será distribuido a los organismos, fondos, programas y agencias pertinentes de las Naciones Unidas.

La financiación del Foro Permanente provendrá de los recursos existentes a través del presupuesto regular de las Naciones Unidas y sus agencias especializadas y mediante eventuales donaciones.

Cinco años después de su establecimiento, ECOSOC realizará una evaluación del funcionamiento del Foro Permanente, incluyendo el método de selección de sus miembros.

En camino hacia la primera sesión del Foro Permanente

Pero con el establecimiento oficial del Foro Permanente en el año 2000 no terminaron los desafíos para asegurar una adecuada implementación de la resolución adoptada por el ECOSOC y que el Foro Permanente recién establecido pudiera responder a las expectativas de los pueblos indígenas.

En este sentido los dos desafíos más importantes a los que se enfrentaron las organizaciones indígenas durante este año fueron:

- El asegurar el control indígena de la nominación de los ocho expertos indígenas
- El conseguir la asignación por parte del sistema de la ONU de los recursos financieros necesarios que posibilitaran la creación de un secretariado independiente al servicio del Foro Permanente con personal indígena calificado.

Procesos indígenas de consulta regional para la nominación de candidatos

Durante todo el proceso de discusión que llevó al establecimiento del Foro Permanente y especialmente después de su establecimiento oficial, una de las demandas principales de las organizaciones indígenas fue el control sobre el proceso de nominación de los ocho "expertos" indígenas. Aunque la resolución hace referencia a que las nominaciones se hagan sobre la base de amplias consultas del Presidente de ECOSOC con las organizaciones indígenas, esta no clarifica ningún tipo de criterio para definir qué se entiende por "amplias consultas" con las organizaciones indígenas.

907

Por ello las organizaciones indígenas, durante este ultimo año, pusieron especial énfasis en promover que el procedimiento más adecuado "para asegurar una amplia consulta con las organizaciones indígenas", tal como se establece en la resolución, era a través de consultas regionales organizadas por pueblos indígenas, con el objetivo de identificar a los candidatos indígenas más adecuados para ser miembros del Foro Permanente.

Ya en el año 2000, los representantes de las organizaciones indígenas llegaron a un acuerdo sobre la distribución regional más adecuada para la nominación de los ocho expertos indígenas. Su recomendación fue que los ocho expertos indígenas fueran nominados en base a siete regiones geo-culturales: Africa, Asia, Ártico, América del Norte, América Central/América del Sur y Caribe y Pacífico, con un sito adicional rotatorio entre las tres regiones más grandes: Asia, Africa, América Central/Sur y Caribe.

Durante el año 2001, las organizaciones indígenas mantuvieron diversas reuniones con el Vice-Presidente de ECOSOC y con la Sra. Mary Robinson, Alta Comisionada para los Derechos Humanos, donde respaldaron la división regional anteriormente mencionada y expresaron que a menos que los pueblos indígenas tuvieran la posibilidad de recomendar sus propios candidatos, a través de consultas indígenas de carácter regional lo más amplias posibles, existía un riesgo real de que determinados gobiernos pudieran intentar controlar o influir en el proceso de la nominación de los candidatos indígenas, y ello sería contrario a las demandas indígenas y al espíritu del establecimiento del Foro Permanente.

En febrero del 2001, la Alta Comisionada para los Derechos Humanos envió una circular invitando a las organizaciones de pueblos indígenas a presentar sus nominaciones de forma individual y solicitó que enviaran sus candidaturas antes del 1 de Octubre del 2001. Esta circular generó una gran preocupación entre un gran número de organizaciones indígenas, ya que la solicitud de nominaciones individuales excluía los propios procesos de consulta regional de las organizaciones indígenas. Más de 25 organizaciones indígenas firmaron una carta dirigida a la Alta Comisionada donde le expresaban sus preocupaciones en relación a las nominaciones individuales.

En Mayo y en Julio del 2001 los representantes indígenas mantuvieron reuniones con el Vice-Presidente del ECOSOC donde reiteraron sus puntos de vista sobre el proceso de nominación y defendieron la postulación de candidatos a través de las consultas regionales.

A pesar de la falta de recursos financieros oficiales para apoyar el proceso de consultas regionales indígenas, aquellas organizaciones indígenas que más activamente habían seguido el proceso de establecimiento del Foro Permanente, establecieron comités regiona-

908

les con el mandato de organizar consultas regionales para la nominación de los candidatos indígenas.

Durante la segunda mitad del año 2001 se celebraron consultas regionales para la nominación de candidatos de Asia, América Central, América del Sur, Rusia, el Pacífico y el Ártico.

Los candidatos nominados por estas consultas regionales indígenas fueron:

América del Sur-	Región Amazónica	Sr. Antonio Jacanamijoy
América del Sur -	Región Andes/ Cono Sur	Sr. Aucan Huilcaman
Asia:		Sr. Parshuram Tamang
Africa:		Sr. Ayitegau Kouevi
Ártico:		Sr. Ole Henrik Magga
Rusia:		Sr. Pavel Sulyanziga
América Central:		Sr. Marcial Arias
América del Norte		Sr. Willie Littlechild
Pacífico		Sra. Mililani Trask

Los procesos para lograr la organización de estas consultas fueron frecuentemente arduos y, en algunos casos, fuente de polémica, pero no cabe duda de que representan el primer esfuerzo significativo de las organizaciones indígenas para alcanzar un consenso en términos de nominar sus propios "expertos" y garantizar de esta manera la legitimidad necesaria de los ocho expertos indígenas miembros del Foro Permanente. No hay duda de que este ha sido sólo el comienzo y que estos procesos tendrán que ser mejorados y perfeccionados en futuras ocasiones, pero la experiencia ha establecido un precedente sumamente constructivo en la búsqueda de procedimientos adecuados para la elección de "expertos" indígenas.

Además de los candidatos nominados por las consultas regionales, la oficina de la Alta Comisionada recibió aproximadamente quince nominaciones de candidatos nominados de manera individual por diversas organizaciones indígenas.

El ECOSOC vuelve a considerar el tema del Foro Permanente en julio del 2001

La reunión sustantiva del ECOSOC celebrada en Ginebra en Julio del 2001, volvió a considerar el tema del Foro Permanente para las Cuestiones Indígenas y adoptó una resolución en la que decidió que:

- La primera sesión tendría lugar en Nueva York del 13 al 24 de Mayo del 2001.

909

- La distribución regional de los expertos nominados por los gobiernos respondería a los cinco grupos regionales con los que opera el sistema de la ONU y estableció un sistema rotativo entre las diferentes regiones para los tres sitos restantes.
- El presidente de ECOSOC anunciaría la elección de los 16 miembros no más tarde del 15 de diciembre del 2001.

Finalmente la resolución llamaba a la Asamblea General a considerar en el presupuesto del 2002-2003 una asignación de recursos financieros para el buen funcionamiento del Foro Permanente que refleje su amplio mandato.

Esta reunión del ECOSOC tuvo lugar durante las mismas fechas que la reunión de la 19. sesión del Grupo de Trabajo para Poblaciones Indígenas, por ello el caucus indígena reunido en Ginebra, decidió solicitar a ECOSOC la posibilidad de poder hacer una intervención en el punto de la agenda dedicado al Foro Permanente. Esta petición fue aceptada por ECOSOC y en nombre del caucus indígena, dos representantes indígenas presentaron una intervención en el plenario. En esta intervención se volvió a señalar la importancia de que el proceso de nominación de los expertos indígenas tomara en cuenta las recomendaciones de las consultas regionales indígenas y la necesidad de que el Foro Permanente contara con un secretariado propio y con los recursos financieros necesarios para el cumplimiento su mandato.

La nominación de los 16 miembros del Foro Permanente

A finales de diciembre del 2001, el Presidente de ECOSOC hizo público los nombres de los miembros del Foro Permanente.

Los expertos nominados por los gobiernos fueron:

Sra. Otilia Lux García de Cotí (Guatemala)
Sr. Marcos Matías Alonso (México)
Sr. Wayne Lord (Canadá)
Sra. Ida Nicolaisen (Dinamarca)
Sr. Yuri A. Boitchenko (Federación Rusa)
Sra. Njuma Ekundanayo (República Democrática del Congo)
Sr. Yuji Iwasawa (Japón)

* Quedó pendiente la nominación de uno de los expertos del grupo regional de Asia.

Los expertos indígenas nominados por el Presidente de ECOSOC fueron :

Sr. Antonio Jacanamijoy (Colombia)
Sr. Ayitegau Kouevi (Togo)
Sr. Willie Littlechild (Canadá)
Sr. Ole Henrik Magga (Noruega)
Sra. Zinaida Strogalschikova (Federación Rusa)
Sr. Parshuram Tamang (Nepal)
Sra. Mililani Trask (EE.UU)
Sr. Fortunato Turpo Choquehuanca (Perú).

Lamentablemente, el presidente de ECOSOC no nombró a todos los candidatos electos en las consultas regionales, pero es importante señalar que de los ocho expertos indígenas nominados, seis provienen de las nominaciones hechas por las consultas regionales. Esto es de hecho un reconocimiento significativo por parte de ECOSOC de los procesos internos de los pueblos indígenas y un gran logro en el proceso de reconocimiento del derecho de los pueblos indígenas a identificar a través de procesos de consulta propios a los expertos indígenas miembros del Foro Permanente.

El Secretariado independiente y los recursos financieros

La necesidad de que el Foro Permanente cuente con los recursos financieros necesarios para el cumplimiento de su mandato y la asignación por parte del presupuesto regular de las Naciones Unidas de recursos financieros necesarios para establecer un secretariado propio, directamente dependiente de la Secretaría de ECOSOC, y con personal indígena calificado ha sido y sigue siendo una de las demandas principales de las organizaciones indígenas en relación con el establecimiento del Foro Permanente.

A lo largo de este año los representantes indígenas abogaron con ahínco para que los organismos financieros del sistema de Naciones Unidas consideraran su demanda de asignar el financiamiento necesario para el establecimiento de un secretariado al servicio del Foro Permanente, para poder así ejecutar de una manera adecuada su mandato. Lamentablemente, y a pesar de todos lo esfuerzos puestos por las organizaciones indígenas para conseguir que se asignaran los recursos financieros necesarios, la única asignación considerada en el presupuesto bianual (años 2002 y 2003) de las Naciones Unidas fue única y exclusivamente para que se pudiera celebrar la primera sesión del Foro Permanente.

911

El tema de la financiación del Foro Permanente sigue siendo uno de los grandes retos pendientes y todavía queda por verse hasta qué punto el Sistema de Naciones Unidas y los Estados miembros están dispuestos a comprometerse con el establecimiento de un Foro Permanente y asignar los recursos económicos necesarios para poder llevar a buen término la tarea encomendada por el ECOSOC.

La falta de recursos financieros que posibiliten al Foro establecer un secretariado propio y un programa de actividades intersesionales, sería la manera más efectiva de impedir que el Foro cumpla el papel que le há sido asignado, convirtiéndose organismo con muy poca incidencia directa y con una mínima capacidad de acción.

Comentarios finales

No hay duda que el establecimiento del Foro Permanente marca un hito histórico, pero también marca el comienzo de un largo proceso que requerirá grandes esfuerzos por parte de todos los involucrados para que el Foro Permanente pueda cumplir su papel exitosamente en el sistema de las Naciones Unidas. Los miembros del Foro, gobiernos, representantes de los pueblos indígenas y ONGs se enfrentan al desafío de establecer y desarrollar formas de trabajo para el Foro Permanente que no reduzcan su capacidad de acción y que le permita implementar su amplio mandato de la mejor manera posible.

Está claro que el proceso que requiere que el Foro Permanente se mueva de la teoría a la acción, del discurso político y las buenas intenciones a resultados concretos que beneficien a los pueblos indígenas y consoliden el reconocimiento y protección de sus derechos dentro del sistema de las Naciones Unidas, será largo y difícil.

Con el mayor de los esfuerzos se superó el primer obstáculo y se consiguió el establecimiento de este nuevo organismo, pero todavía quedan muchos obstáculos por delante. El apoyo firme y coordinado de todos los involucrados en el proceso será esencial para avanzar y para que el Foro Permanente sea capaz de responder a las expectativas de los pueblos indígenas.

RELATOR ESPECIAL DE LA ONU SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS Y LAS LIBERTADES FUNDAMENTALES DE LOS PUEBLOS INDÍGENAS

En el año 2001, la Comisión de Derechos Humanos de la ONU decidió nombrar un relator sobre la Situación de los Derechos 0

La nominación del Relator Especial es otro logro histórico de la larga lucha que los pueblos indígenas han venido llevando en la Comisión de Derechos Humanos y sus organismos subsidiarios para conseguir protección y reconocimiento de sus derechos humanos y libertades fundamentales.

El mandato del Relator Especial es:

- Recoger información y comunicaciones de todas las fuentes relevantes –incluyendo gobiernos y pueblos, comunidades y organizaciones indígenas – sobre violaciones de los derechos humanos y libertades fundamentales de los pueblos indígenas.
- Formular recomendaciones y propuestas sobre medidas y actividades para prevenir y remediar violaciones de los derechos humanos y libertades fundamentales de los pueblos indígenas.
- Trabajar en relación directa con otros relatores especiales, representantes especiales, grupos de trabajo y expertos independientes de la Comisión de Derechos Humanos y de la Sub-Comisión sobre la Promoción y Protección de los Derechos Humanos.

El trabajo del Relator especial incluye misiones para recabar información y comunicaciones con los gobiernos sobre la alegación de violaciones de los derechos de los pueblos indígenas.

En su primer informe, presentado a la Comisión de los Derechos Humanos en abril del 2002, el Dr. Stavenhagen presentó un panorama general de las cuestiones principales sobre derechos humanos a las que se enfrentan los pueblos indígenas y expuso una agenda de trabajo para sus futuras actividades.

Este primer informe del relator especial (E/CN.4/2002/97 and E/CN.4/2002/97 Add1) se puede encontrar en la página WEB de la Oficina de la Alta Comisionada para los Derechos Humanos: http://www.unhchr.ch/indigenous/rapporteur.htm

IWGIA quiere aprovechar esta oportunidad para alentar a las organizaciones y comunidades indígenas a que hagan uso del mecanismo del Relator Especial, enviándole información sobre cualquier violación de sus derechos, para que éste pueda actuar sobre la base de esta información.

913

Cualquier información para el Relator Especial puede ser enviada a la siguiente dirección:

Sr. Rodolfo Stavenhagen
Relator Especial sobre la Situación de los Derechos Humanos de los Pueblos Indígenas
Oficina de la Alta Comisionada para los Derechos Humanos
8-14 Avenue de la Paix 1211 - Geneva 10, Switzerland
Fax: 41 22 917 90 10
Email: jwoo.hchr@unog.ch

LA COMISIÓN AFRICANA DE DERECHOS HUMANOS Y DEL DERECHO DE LOS PUEBLOS (ACHPR)

Actualmente se está desarrollando un proceso interesante y promisorio en el seno de la Comisión Africana de Derechos Humanos y del Derecho de los Pueblos (ACHPR) relativo a la promoción y protección de los derechos humanos de los pueblos y comunidades indígenas de Africa y aquí presentamos una breve actualización de los últimos dos años.

Los antecedentes de la iniciación del proceso pueden ser resumidos brevemente de la siguiente manera: en 1999, IWGIA celebró en Tanzania, en cooperación con el Foro de PINGO, una conferencia sobre la situación de los pueblos indígenas de Africa. Esta conferencia recomendó que la Comisión Africana de Derechos Humanos y del Derecho de los Pueblos debería ser alentada a tratar la situación de derechos humanos de los pueblos indígenas de Africa, algo que hasta entonces nunca había hecho. Uno de los miembros de la Comisión Africana –el comisionado Barney Pityana de Sudáfrica- participó en la conferencia de Tanzania, y planteó el tema durante las sesiones siguientes de la Comisión Africana en Ruanda y Argelia, respectivamente. Inicialmente la Comisión Africana tendió a rechazar el tema, porque no consideraba que el término *pueblos indígenas* fuera aplicable a las condiciones africanas. El principal argumento era que todos los africanos eran indígenas de Africa y que ningún grupo en particular podía alegar un estatus indígena.

Sin embargo, durante la 28ª Sesión Ordinaria de la Comisión Africana, que tuvo lugar en Benin en octubre de 2000, la situación de

los pueblos indígenas estaba en la agenda como un punto aparte. Aunque inicialmente el tema no fue recibido positivamente, su inclusión en la agenda oficial fue un avance histórico crucial, pues dio la posibilidad a la Comisión y a los pueblos indígenas de proseguir con el asunto. Durante la sesión de Benin, la Comisión adoptó una *"Resolución sobre los derechos de los pueblos indígenas/comunidades en Africa"*. La resolución decidió establecer un grupo de trabajo con el siguiente mandato:

- Examinar el concepto de pueblos y comunidades indígenas en Africa.
- Estudiar las implicaciones de la Carta Africana sobre los derechos humanos y el bienestar de las comunidades indígenas.
- Considerar recomendaciones apropiadas para el monitoreo y la protección de los derechos de las comunidades indígenas.

La adopción de esta resolución fue un notable paso adelante, que indica la disposición de la Comisión Africana para debatir este tema.

La 29ª Sesión Ordinaria de la Comisión Africana se celebró en Trípoli, Libia, del 23 de abril al 7 de mayo de 2001. Por primera vez, participaron cinco representantes indígenas en esta sesión, y se les permitió presentar una declaración, aunque ninguna de sus organizaciones tenía estatus de observador en la Comisión. Los representantes indígenas participaron y hablaron en la sesión, organizaron un seminario durante la sesión y presentaron recomendaciones a la Comisión Africana para el trabajo futuro del propuesto Grupo de Trabajo sobre los Derechos de los Pueblos/Comunidades Indígenas en Africa. La participación indígena en la sesión de la Comisión Africana en Libia fue muy importante, porque los pueblos indígenas tuvieron por primera vez la oportunidad de presentar sus casos directamente a la Comisión Africana. Hicieron un activo trabajo de lobby con los gobiernos y los comisionados y, a través del seminario que organizaron durante la sesión, tuvieron la oportunidad de expresar sus intereses y discutir directamente con las otras ONGs de derechos humanos y partes estatales interesadas.

Durante la sesión privada de la 29ª Sesión en Libia, la Comisión Africana estableció el *"Grupo de Trabajo sobre los Derechos de los Pueblos/Comunidades Indígenas en Africa"*. Este grupo de trabajo tiene una naturaleza diferente que la del Grupo de Trabajo de la ONU sobre Poblaciones Indígenas. El Grupo de Trabajo de la Comisión Africana es un pequeño equipo nombrado por la Comisión Africana en su capacidad personal de expertos. No es un foro abierto con amplia participación como el Grupo de Trabajo de la ONU. El modelo del "Grupo de Trabajo" es uno de los mecanismos que existen dentro de la Comisión Africana para estudiar diversos temas de derechos humanos de interés, y actualmente también hay otros Grupos de Trabajo sobre otros tópicos.

915

Los miembros nombrados por la Comisión Africana para el Grupo de Trabajo fueron:

- Comisionado Barney Pityana (presidente del Grupo de Trabajo) (de Sudáfrica)
- Comisionado y presidente de la Comisión Africana Kamel Rezag Bara (de Argelia)
- Comisionado Andrew Chigovera (de Zimbabwe)
- Naomi Kipuri (experta indígena – maasai, Kenia)
- Zephyrin Kalimba (experto indígena – batwa, Ruanda)
- Mohamed Khattali (experto indígena – tuareg, Malí)
- Marianne Jensen (IWGIA, experta independiente)

Fiona Adolu, del secretariado de la Comisión Africana, fue nombrada secretaria del Grupo de Trabajo.

El Grupo de Trabajo tuvo su primera reunión en Gambia el 12 de octubre de 2001, antes del comienzo de la 30ª Sesión de la Comisión Africana que tuvo lugar del 13 al 27 de octubre de 2001. Durante la reunión, se acordó que la primera tarea del Grupo de Trabajo sería elaborar un Documento Conceptual Marco. Este documento sería el primer paso para la elaboración de un informe que debe ser presentado a la Comisión Africana – presumiblemente en abril-mayo de 2003. Se decidió que el documento debería hacer una elaboración inicial de las características de los pueblos indígenas de Africa y dar una idea sobre cuáles grupos de pueblos estamos hablando y definir sus problemas concretos de derechos humanos. La primera redacción de este trabajo tendría que estar pronta antes de la próxima sesión de la Comisión donde sería discutida en una reunión de mesa redonda de un día.

Se decidió que si se lograba conseguir financiación, se realizaría un seminario consultivo más amplio en 2002 para discutir las conclusiones del Documento Conceptual Marco con una audiencia más amplia de pueblos indígenas y expertos en el tema.

Además, se concluyó que es importante que la participación de más indígenas en las próximas sesiones de la Comisión Africana para presentar su situación y que sus organizaciones soliciten el estatus de observador en la Comisión para que se les permita participar y hablar en las sesiones.

Otra actividad importante de la Comisión es la preparación de un análisis de la Carta Africana de Derechos Humanos y del Derecho de los Pueblos a la luz de la discusión de los derechos humanos de los pueblos indígenas.

En la 30ª Sesión, en Gambia, dos de los representantes indígenas del Grupo de Trabajo e IWGIA hicieron declaraciones bajo el punto 10 (i) de la agenda "Situación de los pueblos indígenas", que se

916

mantiene como un punto de la agenda bajo el punto 10 "Actividades Promocionales". El representante del gobierno de Sudáfrica alabó en su declaración el establecimiento del Grupo de Trabajo como una importante iniciativa. Sin embargo, algunos de los comisionados expresaron firmemente su oposición al tema, diciendo que la Comisión Africana parece estar poniendo sobre sus frágiles hombros un tema que no es de la incumbencia de la Comisión. Sostuvieron que el término *indígena* no puede ser usado significativamente en el contexto africano y que implica connotaciones coloniales negativas. Sin embargo, esta posición fue controvertida por otros comisionados, reflejando las diferentes posiciones dentro de la Comisión.

El Grupo de Trabajo produjo una primera redacción del Documento Conceptual Marco antes de la reunión de la mesa redonda, que tuvo lugar, tal como estaba planeado, antes de la 31ª Sesión Ordinaria de la Comisión Africana en Pretoria, Sudáfrica del 2 al 16 de mayo de 2002. A la reunión de la mesa redonda asistieron los miembros del Grupo de Trabajo y cuatro expertos invitados. El proyecto de documento fue discutido y el enfoque utilizado en el trabajo sobre cómo caracterizar a los pueblos indígenas y por qué es importante que una institución como la Comisión Africana trate la situación de derechos humanos de los pueblos indígenas, pareció ser generalmente aceptado. Durante la mesa redonda se acordó continuar con la elaboración del informe, y se espera que sea discutido en un seminario consultivo más amplio en octubre de 2002.

Durante la 31ª Sesión, el comisionado Barney Pityana presentó un informe sobre el progreso del trabajo del Grupo de Trabajo y dos expertos indígenas presentaron declaraciones en nombre del Grupo de Trabajo. También organizaciones como la Organización Internacional del Trabajo (OIT), el Centro para los Derechos Humanos de Botswana e IWGIA hicieron declaraciones. En forma general, los comentarios de los comisionados que hablaron fueron positivos y constructivos, alentando a más comisionados a interarse activamente por el tema de los derechos humanos de los pueblos indígenas y las minorías.

Varios comisionados ya han expresado interés en tratar el tema y en cooperar con el Grupo de Trabajo. Esta actitud abierta de parte de la Comisión Africana es muy encomiable y alentadora. No hay duda de que el tema de los pueblos indígenas sigue siendo difícil en el contexto africano. No obstante, la Comisión Africana es una importante plataforma de debate, y si reconoce la importancia de apoyar a los grupos marginados y vulnerables como los pueblos indígenas, esto enviaría un mensaje muy importante y ayudaría a facilitar un diálogo muy necesario entre los gobiernos africanos y los pueblos indígenas.

PARTE III

PUBLICACIONES E INFORMACION GENERAL

BEST COPY AVAILABLE

PUBLICACIONES DE IWGIA 2001/2002

EN INGLES

No.107 Thomas Køhler & Kathrin Wessendorf (eds.). *Towards a New Millennium: Ten Years of the Indigenous Movement in Russia.* RAIPON & IWGIA 2002. 292 pág. (ilust. y mapas). US$ 16.00; GPB 11,20; DKK 120,00. ISBN: 87-90730-52-6

No. 106 Fergus MacKay. *A Guide to Indigenous Peoples' Rights in the Inter-American Human Rights System.* Forest Peoples Programme & IWGIA 2002. 170 pág. US$10.00, GBP 7,00, DKK 85,00. ISBN: 87-90730-59-3

No.105 Suhas Chakma & Marianne Jensen (eds.). *Racism against Indigenous Peoples.* Asian Indigenous and Tribal Peoples Network & IWGIA 2001. 336 pág. US$ 16.00; GBP 11,20; DKK 120,00. ISBN: 87-90730-46-1

Indigenous Affairs 2001
Racism 1/2001
Militarization 2/2001
Self-Determination 3/2001
Sustainable Development 4/2001

Indigenous Affairs 2002
International Processes – Perspectives and Challenges 1/ 2002
Bolivia (in print) 2/2002
Urban Indigenous 3/2002
Poverty 4/2002

EN ESPAÑOL

No. 35 Beatriz Huertas Castillo. *Los pueblos indígenas en aislamiento. Su lucha por la sobreviviencia y la libertad.* IWGIA 2002. 256 pág. (ilust. y mapas). S/60 – US$ 18,00. ISBN 87-90730-57-7.

No. 34 Shannan L. Mattiace, Rosalva Aída Hernández y Jan Rus (eds). *Tierra, libertad y autonomía: impactos regionales del zapatismo en Chiapas.* CIESAS & IWGIA 2002. 442 pág., (ilust. y mapas). 130 MXP - US$13,50 - ISBN 968-496-443-9.

No. 33 Fergus MacKay. *Guía para los Derechos de los Pueblos Indígenas en el Sistema Interamericano de Derechos Humanos.* Forest Peoples Programme & IWGIA, 2002. 171 pág. US$ 10.00; GBP 7,00; DKK 85,00. ISBN: 87-90730-58-5

919

No. 32 Pedro García Hierro, Alberto Chirif Tirado & Alexandre Surrallés Calonge. *Una Historia Para el Futuro. Territorios y Pueblos Indígenas en Alto Amazonas.* CORPI, Racimos de Ungurahui & IWGIA 2001. 175 pág. (ilust. y mapas). ISBN: 87-90730-55-0

No 31 Roberto Balza Alarcón. *Tierra, Territorio y Territorialidad Indígena. Un Estudio Antropológico sobre la Evolución en las Formas de Ocupación del Espacio del Pueblo Indígena Chiquitano de la Ex-Reducción Jesuita de San José;* APCOB, SNV & IWGIA 2001, 356 pág. (ilust. y mapas). ISBN: 99905-0-038-X 99905-0-043-6

Asuntos Indígenas 2001
Racismo 1/2001
Militarización 2/2001
Auto-determinación 3/2001
2001(en preparación) 2/2002

Asuntos Indígenas 2002
Procesos Internacionales – Perspectivas y Desafíos 1/2002
Bolivia Desarrollo Sostenible 4/
Indígenas Urbanos 3/2002
Pobreza 4/2002

PUBLICACIONES EN OTROS IDIOMAS

Marianne Jensen and Greta M. Maganga (eds.): *Wenyeji Asilia Katika Afrika Mashariki, Kati Na Kusini* (Tradución al swahili de *Asuntos Indígenas no. 2/99* sobre Recolectores y Pastores en Africa). IWGIA 2001, 148 pág. ISBN: 87-90730-44-5US$ 10.50; GBP 7.30; DKK 85,00

Jens Dahl & Alejandro Parellada (eds.): *Katutubong Mamamayan* (Tradución al tagalog – Filipinas - de *Pueblos Indígenas*). IWGIA 2001. 131 pág.

Jens Dahl & Alejandro Parellada (eds.): *Masyarakat Adat di Dunia. Eksistensi Dan Perjuangannya* (Tradución al bahasa – Indonesia - de *Pueblos Indígenas*). IWGIA 2001, 139 pág.

Jens Dahl & Alejandro Parellada (eds.): Traducción al tai de *Pueblos Indígenas*. IWGIA 2001, 127 pág. ISBN 87-90730-30-5

EN DANES

Annelin Eriksen & Knut Rio: *STILLEHAVSFOLK I MELANESIEN*
Red. Käthe Jepsen; IWGIA 2002, 40 s. (ilust.)
ISSN: 1399-9540 / ISBN: 87-90730-54-2 DKK 25.00

Morita Carrasco: *MAPUCHE – Et indiansk folk i Argentina og Chile*
Red. Käthe Jepsen; IWGIA 2001, 40 s. (ilust.)
ISSN: 1399-9540 / ISBN: 87-90730-38-0 DKK 25.00

467

920

PARA SER MIEMBRO DE IWGIA

Todos los interesados son muy bienvenidos a ser miembros de IWGIA. Si Ud. desea formar parte de nuestra dedicada red de trabajo, compuesta por individuos comprometidos, consulte por favor nuestra página web: htt://www. iwgia.org para más detalles y para obtener el formulario necesario. La cuota de miembro para 2002 es:

U$S 50,00/DKK (coronas danesas) 395 para europeos, norteamericanos, australianos, neocelandeses y japoneses.
U$S 20,00/DKK 160 para miembros en el resto del mundo.
U$S 30,00/DKK 235 para estudiantes y jubilados.

Ser miembro representa para IWGIA un importante signo de apoyo político y económico a nuestro trabajo.

PRECIOS DE SUSCRIPCION - 2002

ASUNTOS INDIGENAS & EL MUNDO INDIGENA
Particulares: 50.00 US$ / 410 DKK
Instituciones: 80.00 US$ / 650 DKK

ASUNTOS INDIGENAS & EL MUNDO INDIGENA + LIBROS
Particulares: 100.00 US$ / 810 DKK
Instituciones: 140.00 US$ / 1140 DKK

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD
Particulares: 50.00 US$ / 410 DKK
Instituciones: 80.00 US$ / 650 DKK

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD + BOOKS
Particulares: 100.00 US$ / 810 DKK
Instituciones: 140.00 US$ / 1140 DKK

Las publicaciones de IWGIA son editadas sin fines de lucro.
Toda suscripción a nuestras publicaciones es una directa contribución a fin de que IWGIA pueda seguir elaborando análisis y documentación sobre la situación de los pueblos indígenas del mundo.

Las publicaciones de IWGIA pueden solicitarse a través de

Correo electrónico: iwgia@iwgia.org
Página web: www.iwgia.org
Teléfono: + 45 35 27 05 07

EL MUNDO INDÍGENA 2001/2002

El Anuario de IWGIA es publicado todos los años en el mes de junio y brinda una actualización de la situación de los pueblos indígenas de todo el mundo.

Gracias a las contribuciones de académicos y activistas indígenas y no-indígenas, ***El Mundo Indígena 2001/2002*** suministra una visión general de los acontecimientos fundamentales sucedidos en 2001 y comienzos de 2002 que han hecho impacto sobre los pueblos indígenas del mundo.

Esta edición contiene:

- Informes por regiones y países que cubren la mayor parte del mundo indígena.
- Información actualizada sobre los procesos dentro del sistema de la ONU relacionados con los pueblos indígenas:
  - El Proyecto de Declaración sobre los Derechos de los Pueblos Indígenas
  - El Foro Permanente sobre cuestiones indígenas
  - El Relator Especial sobre los derechos de los pueblos indígenas
- Noticias sobre la Comisión Africana de Derechos Humanos y del Derecho de los Pueblos.

El Mundo Indígena es un material imprescindible para aquellos que necesitan estar informados sobre los temas y acontecimientos más recientes dentro del mundo indígena.

IWGIA GRUPO INTERNACIONAL DE TRABAJO SOBRE ASUNTOS INDIGENAS

ISBN 87-90730-71-

922.

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

Reproduction Basis

[X] This document is covered by a signed "Reproduction Release (Blanket)" form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

[ ] This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").